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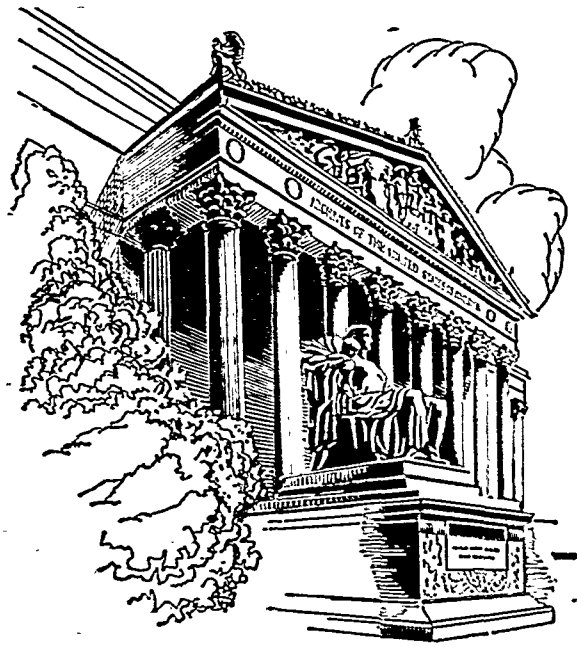

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Title 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 213—EXCEPTED SERVICE

Department of Commerce

Section 213.3314 is amended to show the positions of Director, Bureau of Domestic Commerce, Office of Assistant Secretary for Domestic and International Business, and Deputy Director, Bureau of Domestic Commerce, Office of Assistant Secretary for Domestic and International Business are excepted under Schedule C, and the position of Administrator, Business and Defense Services Administration is revoked. Effective on publication in the FEDERAL REGISTER, subparagraphs (8) and (9) are added to paragraph (m) of § 213.3314 and subparagraph (1) of paragraph (c) is revoked.

§ 213.3314 Department of Commerce.

* * * * *

(c) *Business and Defense Services Administration.* (1) [Revoked]

* * * * *

(m) *Office of the Assistant Secretary for Domestic and International Business.* * * *

(8) Director, Bureau of Domestic Commerce.

(9) Deputy Director, Bureau of Domestic Commerce.

* * * * *

(5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–58 Comp., p. 218)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-16461; Filed, Dec. 7, 1970; 8:49 a.m.]

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

PART 534—PAY UNDER OTHER SYSTEMS

Miscellaneous Amendments

Section 511.201(b) is amended to show exclusion from Part 511 and from classification under the General Schedule of positions of Suicidology Trainee and Suicidology Fellow, Department of Health, Education, and Welfare. Section 534.202(b) is amended to show additional maximum stipends prescribed for positions of Suicidology Trainee and Suicidology Fellow, Department of Health, Education, and Welfare as set out below.

1. Effective September 23, 1970, the following items are added to paragraph (b) of § 511.201.

Suicidology Trainee, Department of Health, Education, and Welfare approved training after a minimum of 3 years of college level training, attainment of a bachelor's degree, or after a minimum of 1, 2, or 3 years of postgraduate predoctoral training.

Suicidology Fellow, Department of Health, Education, and Welfare, approved training after attainment of a doctorate, or after a minimum of 1, 2, or 3 years of postdoctoral training.

2. Effective September 23, 1970, the following items are added to paragraph (b) of § 534.202.

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UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-16491; Filed, Dec. 7, 1970; 8:51 a.m.]

PART 511—CLASSIFICATION UNDER THE GENERAL SCHEDULE

PART 534—PAY UNDER OTHER SYSTEMS

Miscellaneous Amendments

Section 511.201(b) is amended to show exclusion from Part 511 and from classification under the General Schedule of positions of Student physician assistant during approved training during clinical affiliation, Department of Health, Education, and Welfare. Section 534.202(b) is amended to show the additional maximum stipend prescribed for positions of Student physician assistant, Department of Health, Education, and Welfare, as set out below.

1. Effective August 10, 1970, the following item is added to paragraph (b) of 511.201.

Student physician assistants, Department of Health, Education, and Welfare, approved training during clinical affiliation.

2. Effective August 10, 1970, the following item is added to paragraph (b) of 534.202.

Student physician assistants, Department of Health, Education, and Welfare: Approved training during clinical affiliation	L-3

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-16493; Filed Dec. 7, 1970; 8:51 a.m.]

PART 630—ABSENCE AND LEAVE

Subpart E—Recredit of Leave

Part 630 is amended by (1) amending § 630.501(b) to correct an erroneous citation and (2) revoking §§ 630.501(c) and 630.501(d), which are no longer needed, since the amount of annual leave which may be transferred between leave systems is limited only by the amount that may be accumulated under the leave system from which transferred.

§ 630.501 Annual leave recredit.

(a) When an employee transfers between positions under subchapter I of chapter 63 of title 5, United States Code, the agency from which he transfers shall certify his annual leave account to the employing agency for credit or charge.

(b) When annual leave is transferred between different leave systems under section 6308 of title 5, United States Code, or is recredited under a different leave system as the result of a refund under section 6306 of that title, 7 calendar days of annual leave are deemed equal to 5 workdays of annual leave.

(c) [Revoked]

(d) [Revoked]

(Sec. 1(2) of E.O. 11228; 3 CFR, 1964–65 Comp., p. 318)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-16492; Filed, Dec. 7, 1970; 8:51 a.m.]

Title 8—ALIENS AND NATIONALITY

Chapter I—Immigration and Naturalization Service, Department of Justice

MISCELLANEOUS AMENDMENTS TO CHAPTER

The following amendments to Chapter I of Title 8 of the Code of Federal Regulations are hereby prescribed:

PART 204—PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A UNITED STATES CITIZEN OR AS A PREFERENCE IMMIGRANT

Paragraph (b) of § 204.5 is amended to read as follows:

§ 204.5 Automatic conversion of classification of beneficiary.

* * * * *

(b) *By beneficiary's attainment of the age of 21 years.* A currently valid petition, classifying the child of a United States citizen as an immediate relative under section 201(b) of the Act shall, if the beneficiary is still unmarried and is not a native of an independent country of the Western Hemisphere, be regarded as approved for preference status under section 203(a)(1) of the Act as of the beneficiary's attainment of his 21st birthday.

* * * * *

PART 205—REVOCATION OF APPROVAL OF PETITIONS

Subparagraph (4) of paragraph (a) of § 205.1 is amended to read as follows:

§ 205.1 Automatic revocation.

* * * * *

(a) *Relative petitions.* * * *

(4) Upon a child beneficiary reaching the age of twenty-one, when he has been accorded immediate relative status under section 201(b); however, except for a native of an independent country of the Western Hemisphere, such petition is valid to accord status under section 203(a)(1) of the Act if the beneficiary remains unmarried or if he marries, such petition is valid to accord status under section 203(a)(4) of the Act for the duration of the relationship.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

Subparagraph (1) of paragraph (b) of § 212.7 is amended to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

* * * * *

(b) *Section 212(g) (tuberculosis and certain mental conditions).* * * *

(1) *Section 212(a)(6) (tuberculosis).* If the alien is excludable under section 212(a)(6) of the Act because of tuberculosis, he shall execute statement A on the reverse of page 1 of Form I-601. In addition, he or his sponsor in the United States is responsible for having Statement B executed by the physician or health facility which has agreed to supply treatment or observation; and, if required. Statement C shall be executed by the appropriate local or State health officer.

* * * * *

PART 234—PHYSICAL AND MENTAL EXAMINATION OF ARRIVING ALIENS

Paragraphs (c) and (d) of § 234.2 are amended to read as follows:

§ 234.2 Examination in the United States of alien applicants for benefits under the immigration laws.

* * * * *

(c) *Civil surgeon reports*—(1) *Applicants for status of permanent resident.* When an applicant for status of permanent resident is found upon examination to be free of any defect, disease or disability listed in section 212(a) of the Act, the civil surgeon will endorse Form I-486A, Medical Examination and Immigration Interview, in duplicate, and forward it with X-ray and other pertinent laboratory reports to the immigration office by which the alien was referred. If the applicant is found to be afflicted with such defect, disease, or disability, the civil surgeon will complete Form FS-398, in duplicate, and forward it with Form I-486A, X-ray and other pertinent laboratory reports to the immigration office by which the alien was referred. That office will forward to the Medical Officer in Charge, U.S. Quarantine Station, Rosebank, Staten Island, NY 10305, a copy of Form I-486A with X-ray and laboratory reports. In addition, when the applicant has been found by the civil surgeon to be afflicted, Form FS-398 will be forwarded to the Medical Officer in Charge for issuance of an appropriate medical certificate, and decision on the application for status of permanent resident shall be deferred pending receipt of the certificate.

(2) *Other applicants.* The results of the examination will be entered on Form I-141, Medical Certificate, in duplicate. This form will be returned to the immigration office by which the alien was referred.

(d) *U.S. Public Health Service hospital and outpatient clinic reports*—(1) *Applicants for status of permanent resident.* When an applicant for status of permanent resident is found upon examination to be free of any defect, disease, or disability listed in section 212(a) of the Act, the U.S. Public Health physician will endorse Form I-486A, Medical Examination and Immigration Interview, and forward it to the immigration office by which the alien was referred. In any case where the applicant is not found to be free of any defect, disease, or disability listed in section 212(a) of the Act, an appropriate Medical Certificate, Form PHS-124(FQ) or FS-398, will be issued, and the original furnished the immigration office requesting the examination. The copy of Forms I-486A, PHS-124(FQ), or FS-398 retained by the U.S. Public Health physician will be sent to the Medical Officer in Charge, U.S. Quarantine Station, Rosebank, Staten Island, NY 10305, where a central file of these cases will be maintained.

(2) *Other applicants.* The results of the examination will be entered on Form I-141, Medical Certificate, in duplicate. This form will be returned to the immigration office by which the alien was referred.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

1. Paragraph (e) of § 245.1 is amended to read as follows:

§ 245.1 Eligibility.

* * * * *

(e) *Nonpreference aliens.* An applicant who is a nonpreference alien seeking adjustment of status for the purpose of engaging in gainful employment in the United States, and who is not exempted under § 212.8(b) of this chapter from the labor certification requirement of section 212(a)(14) of the Act, is ineligible for the benefits of section 245 of the Act unless an individual labor certification is issued by the Secretary of Labor or his designated representative, or unless the applicant establishes that he is within Schedule A or within the Schedule C—Precertification List (29 CFR Part 60) when the latter list has not been suspended by the Secretary of Labor.

* * * * *

§ 245.2 [Amended]

2. The first sentence of subparagraph (1) *Alien whose occupation is included in Schedule A or C—Precertification List, 29 CFR Part 60, or who is a member of the professions or has exceptional ability in the sciences or arts* of paragraph (b) *Application by nonpreference alien seeking adjustment of status for purpose of engaging in gainful employment* of § 245.2 *Application* is amended to read as follows: "An applicant for adjustment of status as a nonpreference alien under section 245 of the Act must submit Forms MA 7-50A with his application if he is qualified for and will be engaged in an occupation currently listed in Schedule A or Schedule C—Precertification List (29 CFR Part 60) when the latter list has not been suspended, or if he is a member of a profession for which the Secretary of Labor does not require a job offer, or if he has exceptional ability in the sciences or the arts."

3. The first sentence of subparagraph (2) *Other nonpreference aliens who will engage in gainful employment* of paragraph (b) *Application by nonpreference alien seeking adjustment of status for purpose of engaging in gainful employment* of § 245.2 *Application* is amended to read as follows: "If the applicant for adjustment as a nonpreference alien under section 245 of the Act will engage in gainful employment and does not come within the purview of 8 CFR 245.2(b)(1), he must submit with his application a certification of the Secretary of Labor or his designated representative issued under section 212(a)(14) of the Act."

PART 299—IMMIGRATION FORMS

§ 299.1 [Amended]

Section 299.1 *Prescribed forms* is amended by deleting Form I-486 and reference thereto and substituting in lieu thereof Form I-486A to read as follows:

Form No.	*Title and description*
I-486A	Medical Examination and Immigration Interview.

PART 316a—RESIDENCE, PHYSICAL PRESENCE AND ABSENCE

§ 316a.2 [Amended]

"University of Washington (Department of Marketing, Transportation, and International Business), Seattle, Wash.," appearing in the listing of institutions of research of 316a.2 *American institutions of research* is amended to read as follows:

University of Washington (Department of Marketing, Transportation, and International Business) and (The School of Public Health and Community Medicine), Seattle, Wash.

(Sec. 103, 66 Stat. 173; 8 U.S.C. 1103)

This order shall be effective on the date of its publication in the FEDERAL REGISTER. Compliance with the provisions of section 553 of title 5 of the United States Code (80 Stat. 383), as to notice of proposed rule making and delayed effective date, is unnecessary in this instance and would serve no useful purpose because the amendments to §§ 204.5(b) and 205.1(a)(4) are clarifying in nature; the amendment to § 212.7(b)(1) relates to agency procedure; the amendments to § 234.2 (c) and (d) confer benefits upon persons affected thereby; the amendments to §§ 245.1(e), 245.2(b)(1), and 245.2(b)(2) conform with previous amendments made elsewhere in this chapter; the amendment to § 299.1 deletes and adds a form to the list of forms; and the amendment to § 316a.2 adds an institution of research to the list.

Dated: December 2, 1970.

RAYMOND F. FARRELL,
Commissioner of Immigration and Naturalization.

[F.R. Doc. 70-16460; Filed, Dec. 7, 1970; 8:49 a.m.]

Title 12—BANKS AND BANKING

Chapter V—Federal Home Loan Bank Board

SUBCHAPTER C—FEDERAL SAVINGS AND LOAN SYSTEM

[No. 70-477]

PART 545—OPERATIONS

Transactions With the Federal Home Loan Mortgage Corporation

DECEMBER 2, 1970.

Resolved That the Federal Home Loan Bank Board considers it advisable to amend Part 545 of the rules and regulations for the Federal Savings and Loan System (12 CFR Part 545) for the purpose of implementing the authority contained in section 305(b) of the Federal Home Loan Mortgage Corporation Act to permit Federal savings and loan associations to engage in mortgage transactions with the Federal Home Loan Mortgage Corporation specified in section 305(a) of such Act. Accordingly, the Federal Home Loan Bank Board hereby amends such Part 545 by adding a new § 545.6-24, immediately after § 545.6-23 thereof, to read as follows, effective December 8, 1970:

§ 545.6-24 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provision of this part, any Federal association may enter into and perform and carry out any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in subsection (a) of section 305 of the Federal Home Loan Mortgage Corporation Act. For the purposes of this section, the term "mortgage" shall have the meaning given it by section 302(d) of such Act.

(Sec. 305, Public Law 91-351, 84 Stat. 455, sec. 5, 48 Stat., as amended; 12 U.S.C. 1464. Reorg. Plan. No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943-48 Comp., p. 1071)

Resolved further that, since affording notice and public procedure on the above amendment would delay it from becoming effective for a period of time and since it is in the public interest that such amendment become effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and, for the same reason, the Board finds that publication of such amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is contrary to the public interest; and the Board hereby provides that such amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[F.R. Doc. 70-16463; Filed, Dec. 7, 1970; 8:49 a.m.]

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

[No. 70-476]

PART 563—OPERATIONS

Semiannual Credit Requirements for Federal Insurance Reserve

DECEMBER 1, 1970.

Resolved that the Federal Home Loan Bank Board, upon the basis of consideration by it of the advisability of amending paragraph (b) of § 563.13 of the rules and regulations for Insurance of Accounts (12 CFR 563.13(b)), for the purpose of continuing indefinitely the suspension of the semiannual credit requirements for the Federal insurance reserve which are based on percentage of growth in specified assets, hereby amends paragraph (b) of said § 563.13 by revising subparagraph (6) thereof to read as follows, effective December 8, 1970:

§ 563.13 Required amounts and maintenance of Federal insurance reserve.

* * * * *

(b) *Semiannual credits.* * * *

* * * * *

(6) During the four semiannual periods commencing on or after December 1, 1968, and during any following semiannual period commencing while this subparagraph (6) is in effect, the semiannual credit requirements based on percentage of growth in specified assets in subdivisions (i) (b) and (c) and (ii) (b) of subparagraph (3) of this paragraph shall be suspended.

* * * * *

(Secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4931, 3 CFR, 1943-48 Comp., p. 1071)

Resolved further that, since the above amendment continues a grant of exemption from an existing requirement, the Board hereby finds that notice and public procedure with respect to said amendment are unnecessary under the provisions of 12 CFR 508.11 and 5 U.S.C. 553 amendment for the period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date of said amendment would in the opinion of the Board likewise be unnecessary for the same reason, the Board hereby provides that said amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[F.R. Doc. 70-16464; Filed, Dec. 7, 1970; 8:49 a.m.]

[No. 70-478]

PART 563—OPERATIONS

Transactions by Insured Institutions With the Federal Home Loan Mortgage Corporation

DECEMBER 2, 1970.

Resolved that the Federal Home Loan Bank Board considers it advisable to

amend Part 563 of the rules and regulations for Insurance of Accounts (12 CFR Part 563) for the purpose of implementing the authority contained in section 305(b) of the Federal Home Loan Mortgage Corporation Act to permit insured institutions to engage in mortgage transactions with the Federal Home Loan Mortgage Corporation specified in section 305(a) of such Act. Accordingly, the Federal Home Loan Bank Board hereby amends such Part 563 by adding a new § 563.9–4, immediately after § 563.9–3 thereof, to read as follows, effective December 8, 1970:

§ 563.9–4 Mortgage transactions with the Federal Home Loan Mortgage Corporation.

Without regard to any other provision of this part, any insured institution, to the extent it has legal power to do so, may enter into and perform and carry out any mortgage transaction with the Federal Home Loan Mortgage Corporation specified in subsection (a) of section 305 of the Federal Home Loan Mortgage Corporation Act. For the purposes of this section, the term "mortgage" shall have the meaning given it by section 302(d) of such Act.

(Sec. 305, Public Law 91–351, 84 Stat. 455, secs. 402, 403, 48 Stat. 1256, 1257, as amended; 12 U.S.C. 1725, 1726. Reorg. Plan No. 3 of 1947, 12 F.R. 4981, 3 CFR, 1943–48 Comp., p. 1071)

Resolved further That, since affording notice and public procedure on the above amendment would delay it from becoming effective for a period of time and since it is in the public interest that such amendment become effective as soon as possible, the Board hereby finds that notice and public procedure thereon are contrary to the public interest under the provisions of 12 CFR 508.11 and 5 U.S.C. 553(b); and, for the same reason, the Board finds that publication of such amendment for the 30-day period specified in 12 CFR 508.14 and 5 U.S.C. 553(d) prior to the effective date thereof is contrary to the public interest; and the Board hereby provides that such amendment shall become effective as hereinbefore set forth.

By the Federal Home Loan Bank Board.

[SEAL] JACK CARTER,
Secretary.

[F.R. Doc. 70–16465; Filed, Dec. 7, 1970; 8:49 a.m.]

Title 14—AERONAUTICS AND SPACE

Chapter I—Federal Aviation Administration, Department of Transportation

[Docket No. 70–EA–94; Amdt. 39–1118]

PART 39—AIRWORTHINESS DIRECTIVES

American Aviation Model AA–1 Type Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to American Aviation Model AA–1 type aircraft, Serial Nos. AA1–0001 through AA1–0125. Experience has demonstrated that the trim bungee housings tend to bind, causing elevators to jam. Since this condition is likely to exist or develop in other aircraft of like type design, an airworthiness directive is being issued to require substitution of a redesigned bungee housing that will preclude the possibility of elevator jamming.

Further, since a condition exists which requires expeditious issuing of this amendment, notice and public procedure are impractical, and it may be made effective in less than 30 days.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

AMERICAN AVIATION MODEL AA–1. Applies to American Aviation Model AA–1, Serial Nos. AA1–0001 through AA1–0125 airplanes certificated in all categories.

Unless already accomplished, compliance required within the next 25 hours in service or within three (3) weeks from the effective date of this AD, whichever occurs first.

To preclude binding of the trim actuator and elevator centering bungee in the existing bearing, comply with Item 1, "Bungee Mounting Plate Replacement," of American Aviation Service Letter No. 69–1A, dated July 10, 1969, or later revision or equivalent modification, either of which must be approved by the Chief, Engineering and Manufacturing Branch, FAA—Eastern Region.

This amendment is effective December 8, 1970.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6, Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on November 18, 1970.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[F.R. Doc. 70–16427; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. 70–EA–90, Amdt. 39–1117]

PART 39—AIRWORTHINESS DIRECTIVES

Canadair Aircraft

The Federal Aviation Administration is amending § 39.13 of Part 39 of the Federal Aviation Regulations so as to issue an airworthiness directive applicable to Canadair CL–215–1A10 type airplane which will modify AD 70–1–5.

Subsequent to the issuance of AD 70–1–5 it was determined that the modification of the aircraft in accordance with the service bulletin or an approved alternate rendered the continuous inspections unnecessary. Therefore this amendment will permit such discontinuance.

Since the amendment is relaxatory in nature and does not impose any additional burden on any person, notice and public procedure hereon are unnecessary and it may be made effective in less than 30 days.

In view of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 CFR 11.89 (31 F.R. 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by amending AD 70–1–5 as follows:

(1) Amend § 39.13 of Part 39 of the Federal Aviation Regulations by amending AD 70–1–5 by adding the following paragraph (d).

(d) The repetitive inspection specified in (a) may be discontinued when the modification defined in Canadair Modification Summary No. IC–1510 and contained in Service Bulletin CL–215–51 has been incorporated, or an equivalent modification approved by the Chief, Engineering and Manufacturing Branch, FAA Eastern Region, has been incorporated.

This amendment is effective December 8, 1970.

(Secs. 313(a), 601, 603, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, 1423; sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Jamaica, N.Y., on November 16, 1970.

WAYNE HENDERSHOT,
Acting Director, Eastern Region.

[F.R. Doc. 70–16428; Filed, Dec. 7, 1970; 8:47 a.m.]

[Airspace Docket No. 70–SO–72]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Designation of Transition Area

On October 20, 1970, a notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 16374), stating that the Federal Aviation Administration was considering an amendment to Part 71 of the Federal Aviation Regulations that would designate the Humboldt, Tenn., transition area.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments. All comments received were favorable.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t., February 4, 1971, as hereinafter set forth.

In § 71.181 (35 F.R. 2134), the following transition area is added:

HUMBOLDT, TENN.

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Humboldt Municipal Airport (lat. 35°48'00" N., long. 88°52'00" W.); within 2.5 miles each side of the Dyersburg VORTAC 121° radial, extending from the 5-mile radius area to 23 miles southeast of the VORTAC.

(Sec. 307(a), Federal Aviation Act of 1958, 49 U.S.C. 1348(a); sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in East Point, Ga., on November 27, 1970.

GORDON A. WILLIAMS, Jr.,
Acting Director, Southern Region.

[F.R. Doc. 70–16429; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. 10257; Amdt. 135-23]

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

Air Taxi Operations With Certain Turbojet Powered Airplanes

The purpose of this amendment to Part 135 of the Federal Aviation Regulations is to extend the compliance date as to certain Part 121 equipment requirements for Part 135 certificate holders operating turbojet powered airplanes having maximum certificated takeoff weights over 12,500 pounds but under 27,000 pounds, with passenger capacities of not more than 12 persons, and used only for planeload charter flights.

On September 8, 1969, the FAA adopted Amendment 135-9, which was published in the FEDERAL REGISTER on September 16, 1969 [34 F.R. 14423], and became effective November 15, 1969. That amendment requires Part 135 certificate holders to conduct their operations with large aircraft in compliance with the Part 121 rules applicable to supplemental air carriers [§ 135.2(a)].

Since the adoption of the amendment, several air taxi operators have petitioned the FAA for rule making concerning compliance with certain equipment requirements that are uniquely difficult to meet as to certain airplanes being operated. These airplanes are turbojet powered, with maximum certificated takeoff weights of over 12,500 pounds but under 27,000 pounds, with passenger capacities of not more than 12 persons.

The FAA has determined that because of difficulty with compliance, operators of these airplanes, if used only in planeload charter operations, should be given until November 15, 1973, to achieve compliance with § 121.313(f)—a lockable door between the pilot and passenger compartments; § 121.343(a)—flight recorder; § 121.359—cockpit voice recorder; § 121.585—closing and locking of the door between the pilot and passenger compartments; and § 121.581(a)—forward observer's seat. The amendment provides that when the forward observer's seat is not installed, the operator must provide a passenger seat with appropriate communications equipment acceptable to the Administrator for use by the Administrator when conducting en route inspections.

Since immediate relief by extending the compliance date is justified, and there is insufficient time to grant the relief required through notice and public procedure, I find that notice and public procedure on this amendment are impracticable, and that it may be made effective in less than 30 days.

In consideration of the foregoing, § 135.2 of the Federal Aviation Regulations is amended, effective November 16, 1970, by amending § 135.2(e) to read as follows:

§ 135.2 Air taxi operations with large aircraft.

* * * * *

(e) Operators of turbojet powered airplanes with maximum certificated takeoff weights of over 12,500 pounds but under 27,000 pounds, with passenger-carrying capacities of not more than 12 persons, used only in planeload charter flights, need not comply until November 15, 1973, with § 121.313(f)—a lockable door between the pilot and passenger compartments; § 121.343(a)—flight recorder; § 121.359—cockpit voice recorder; § 121.587—closing and locking of door between the pilot and passenger compartments; and § 121.581(a)—forward observer's seat, provided that if the forward observer's seat is not installed, a forward passenger seat with appropriate communications equipment nearby is provided for use by the Administrator while conducting en route inspections. The location and equipment of the seat, with respect to its suitability for use in conducting en route inspections, is determined by the Administrator.

(Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, 49 U.S.C. 1354(a), 1421, and 1424, sec. 6(c), Department of Transportation Act, 49 U.S.C. 1655(c))

Issued in Washington, D.C., on December 1, 1970.

J. H. SHAFFER,
Administrator.

[F.R. Doc. 70-16430; Filed, Dec. 7, 1970; 8:47 a.m.]

Title 18—CONSERVATION OF POWER AND WATER RESOURCES

Chapter I—Federal Power Commission

[Docket No. R-365; Order No. 414]

PART 2—RULES OF PRACTICE AND PROCEDURE

PART 4—LICENSES, PERMITS, AND DETERMINATION OF PROJECT COSTS

Protection and Enhancement of Natural, Historic, and Scenic Values in the Design, Location, Construction, and Operation of Project Works

NOVEMBER 27, 1970.

On July 29, 1969, the Commission issued a notice of proposed rulemaking in this proceeding (34 F.R. 12, 718, August 5, 1969),[1] wherein it proposed to amend Part 4 of the regulations under the Federal Power Act and to add § 2.12[2] to Part 2 of its general rules, relating to the implementation of procedures for the protection and enhancement of aesthetic and related values in the design, location, construction, and operation of project works.

Twenty-six responses have been received to the Commission's notice[3] suggesting a number of modifications of the proposed rules and regulations. A number of these suggestions, as hereinafter discussed, will result in improvements in the terms of the rulemaking. Those not adopted were considered to be unnecessary or lacking in merit.

We are changing the format of § 2.13, "Aesthetic Design and Construction", to consist of: (a) A general statement of Commission policy, (b) a policy statement providing for restrictions on the amendment of licenses for the purposes of protecting the aesthetics of the project area, and (c) a reference to the Commission's "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities." This change was prompted primarily by the consideration that it would be more appropriate that, rather than issue the findings of the Working Committee on Utilities of the President's Council on Recreation and Natural Beauty, the Commission issue and adopt its own guidelines adapted from these findings. The Commission guidelines, attached as Appendix A hereto, reflect our views after taking account of written comments plus those received at a conference held on August 10, 1970, between the staff and representatives of the commenting parties.

One additional change has been made in § 2.13. In response to numerous comments, the words "or minimize" have been added after the word "avoid" in the showing that is to be made prior to amendment of any outstanding license in recognition that some conflict with the aesthetics of the area in certain circumstances may not be avoided. We recognize that utilization of an area is

[1] On May 15, 1970, a notice amending the July 29, 1969 notice was issued (35 F.R. 7835, May 23, 1970).

[2] A new § 2.12 was added to Part 2 by Order No. 404, issued May 15, 1970 (35 F.R. 7963, May 23, 1970). Accordingly, the new section to Part 2 added by this order will be designated § 2.13.

[3] See the following list:
1. Gulf Power Co.
2. Pacific Gas and Electric Co.
3. Consolidated Edison Co. of New York, Inc.
4. Alabama Power Co.
5. Public Service Electric and Gas Co.
6. Consumers Power Co.
7. Pennsylvania Power & Light Co.
8. Public Utility District No. 1 of Chelan County.
9. Utah Power & Light Co.
10. Southern California Edison Co.
11. Edison Electric Institute.
12. Georgia Power Co.
13. National Wildlife Federation.
14. Washington Water Power Co.
15. Sacramento Municipal Utility District.
16. Los Angeles Department of Water and Power.
17. Department of Water Resources—State of California.
18. Idaho Fish and Game Department.
19. Mr. H. B. Fyffe.
20. Arkansas Power & Light Co.
21. Citizens Committee for the Hudson Valley.
22. Virginia Electric and Power Co.
23. U.S. Department of Agriculture.
24. Mrs. Ethel M. Hugg.
25. Game Commission of the State of Oregon.
26. Advisory Council on Historic Preservation.

not necessarily detrimental and may in some instances have beneficial effects on the area. The line now reads: "* * * unless a showing is made that the construction will be designed to avoid or minimize conflict * * *." Many comments objected to the use of the word "aesthetics" as being too broad and vague. After considering these comments we feel that the public interest is best served by replacing the word "aesthetics" with the words "natural, historic, and scenic."

In the response to comments by the Advisory Council on Historic Preservation, the new Exhibit V will include the location by the latitude-longitude system of coordinates whenever National Historic places are affected by a project.

A number of comments dealt with the new Exhibit V to be required with license applications in section 4.41. Many of these requested that the words "or minimize" be added after "prevent" in the line which reads "clearing of the reservoir area to prevent damage to the environment." We have therefore added these words recognizing that in some instances it is impossible to prevent damage to the environment. However, our requirement in this Exhibit V that the applicant show what is being done to preserve and enhance the project's scenic values contemplates that where some damage is unavoidable, the applicant will pursue a program of enhancement in order to mitigate the damage caused by the project.

It has been suggested that the requirement in the Exhibit V that the applicant consult with "individuals having an interest" is too broad and vague and might put onerous responsibilities upon applicants. In recognition that consultation with all individuals who assert an interest may be excessively costly and delaying, we have revised the rule to require consultation with, or consideration of comments submitted by, Federal, State, and local agencies or organizations, and individuals having an interest. It has also been suggested that to include temporary facilities in the Exhibit V would be extremely difficult for they are not preplanned in detail. However, no change is warranted, for we feel that promoting preplanning in the interest of environmental protection is a worthwhile objective of the rulemaking.

Exhibit V has also been modified by: (1) Replacing the phrase in the first sentence, "including transmission lines", with "including compliance with the Commission's 'Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities'"; (2) requiring the Applicant to show the location of those rights-of-way which it intends to utilize and why the others are not to be utilized to encourage the use of existing rights-of-way for the project transmission lines; and (3) requiring the applicant to state (a) the reason why any project works are located so near to any of the national historic places listed in the National Register of Historic Places, or any officially designated park, scenic, natural, or recreational area as to have a significant effect upon such place or area and (b) the efforts being taken to minimize that effect.

Exhibit V of § 4.50 has been revised to clarify the use of the words "areas of public interest". The list of areas has been enlarged to include residential, and the reference to areas of public interest deleted. The exhibit also has been slightly modified to provide for the possibility that the project transmission lines would have no significant effect on the subject areas.

Concern was expressed that the amendment of Exhibits J and K of § 4.71, requiring a detailed Exhibit K covering the entire transmission line application, is beyond the authority of the Commission. This point should be clarified. The amendment incorporated herein eliminates the provision that a detailed Exhibit K is necessary only for those parts of the transmission line which cross lands of the United States. Inasmuch as the amendment deletes this provision, a detailed Exhibit K would be required as provided for in § 4.41. Section 4.41, Exhibit K requires a map covering the "entire project area." The modification enacted herein does not require a detailed Exhibit K for lands beyond the project area.

The notice of proposed rulemaking herein proposed the amendment of Exhibit H of § 4.82 to provide for the inclusion of transmission lines in applications for preliminary permits. There were several comments in response to this section asserting that the final locations of transmission lines are not known when application for a preliminary permit is made. Examination reveals this to be an accurate assertion. Thus, we are deleting the amendment to Exhibit H of § 4.82.

There were additional suggestions that the rule should expressly limit its applicability to jurisdictional facilities. We do not feel that a jurisdictional limitation is necessary, inasmuch as the rule addressess itself only to jurisdictional facilities.

A request has been made that the rule should expressly provide for an opportunity for a hearing on any order issued under the rule. We feel that opportunity for a hearing is adequately provided by the Commission's present regulations under the Federal Power Act, particularly §§ 4.32 and 4.83.

One comment suggested that the rule should be delayed until pending environmental legislation is enacted and then the rule correlated with other agencies. The Commission is presently implementing the coordination of its environmental policies with Federal legislation, and other interested agencies. To delay this rulemaking would not significantly further this correlation and would not be in the public interest.

The Commission finds:

(1) The revisions made herein to the amendments proposed in the notice of proposed rulemaking do not impose a further burden on persons subject to these regulations and do not amount to a substantial departure from the original proposal; therefore no further notice or hearing prior to adoption is necessary.

(2) The adoption of: (1) "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities" annexed as Appendix A hereto and as referred to in the new § 2.13 and in the revised § 4.41; (2) the new § 2.13, Part 2—General Policy and Interpretations of the Commission's general rules and; (3) the amendments to the regulations under the Federal Power Act, hereinafter set forth, are necessary and appropriate for carrying out the provisions of the Federal Power Act.

The Commission acting pursuant to the provisions of the Federal Power Act as amended, particularly sections 4(e), 6, 9, 10, and 309 thereof (41 Stat. 1065–1070; 49 Stat. 840–844, 858–859; 61 Stat. 501; 82 Stat. 617; 16 U.S.C. 797(e), 799, 802, 803, 828h) orders:

(A) Part 2, Subchapter (A), Chapter I, Title 18, Code of Federal Regulations is amended by adding a new § 2.13 to read as follows:

§ 2.13 Design and construction.

(a) The Commission recognizes the importance of protecting and enhancing natural, historic, scenic, and recreational values at projects licensed or proposed to be licensed under the Federal Power Act.

(b) The Commission has adopted "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities"[1] as set forth in Order No. 414 issued November 27, 1970. The Commission will consider these guidelines inter alia, in the determination of whether applications for any licenses under the Federal Power Act are best adapted to a comprehensive plan for developing a waterway. The guidelines may be obtained from the Office of Public Information, Federal Power Commission, 441 G Street NW., Washington, DC 20426.

(c) In furtherance of these polices, the Commission will not (1) permit the amendment of any license for the purpose of construction of additional facilities or (2) authorize the disposition of any interest in project lands for construction of any type, unless a showing is made that the construction will be designed to avoid or minimize conflict with the natural, historic, and scenic values and resources of the project area, including compliance with the Commission's "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities".

(B) Part 4, Subchapter (B), Chapter I, Title 18, Code of Federal Regulations is amended by adding Exhibit V to § 4.41 as follows:

[1] Filed as part of the original document.

§ 4.41 Required Exhibits.

* * * * *

Exhibit V. A map, together with text, photographs or drawings as may be needed to describe the location of, and architectural design, landscaping, and other reasonable treatment to be given to project works, including compliance with the Commission's "Guidelines for the Protection of Natural, Historic, Scenic, and Recreational Values in the Design and Location of Rights-of-Way and Transmission Facilities", in the interest of protecting and enhancing the natural, historic, and scenic values and resources of the project area. The exhibit shall include measures to be taken during construction and operation of the project works including temporary facilities such as roads, borrow and fill areas, and clearing of the reservoir area to prevent or minimize damage to the environment and to preserve and enhance the project's scenic values, together with estimated costs of such treatments, location, and design. Applicant shall prepare this exhibit, on the basis of studies made after consultation with, or consideration of comments submitted by, Federal, State, and local agencies or organizations and individuals having an interest in the natural, historic, and scenic values of the project area, and shall set forth therein the nature and extent of this consultation or consideration. The exhibit shall include the location of existing rights-of-way belonging either to the applicant or others which could practically be used in routing the projects transmission lines. The applicant shall submit a statement indicating which of such rights-of-way it intends to use and explaining why the other rights-of-way shown are not to be used. Where any project works will or may be located sufficiently near to have a significant effect upon any of the national historic places listed in the National Register of Historic Places maintained by the Secretary of the Interior, or any park, scenic, natural, or recreational area officially designated by duly constituted public authorities, applicant shall state the reason for such location and efforts being taken to minimize the adverse effects of that location. Whenever such historic places are affected by the project, applicant shall locate the project by latitude and longitude. To the extent that these requirements have been fulfilled in other exhibits, a specific reference to the applicable parts of those exhibits will suffice.

(C) Part 4, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended by adding Exhibit V to § 4.50 as follows:

§ 4.50 Contents.

* * * * *

Exhibit V. A map showing the location of the project's transmission lines, in relation to residential, natural, historic, scenic, and recreational areas, and areas set aside for future recreational development. Appropriate details should be shown to allow for an adequate assessment of the effect, if any, of the lines on such areas. Whenever any of the national historic places listed in the National Register of Historic Places maintained by the Secretary of the Interior are affected by the project applicant shall locate the project by latitude and longitude. If the information desired herein can be shown with sufficient detail on Exhibit K or R this exhibit may be omitted.

(D) Section 4.71 in Part 4, Subchapter B, Chapter I, Title 18 of the Code of Federal Regulations is amended by revising the paragraph describing Exhibits J and K and by adding a new paragraph entitled Exhibit V as follows:

§ 4.71 Required exhibits.

* * * * *

Exhibits J and K. Maps conforming to the requirements of §§ 4.40 to 4.42, inclusive, for applications for proposed major projects insofar as said requirements are applicable to transmission lines. If the application covers only part of a transmission system, Exhibit J shall show the connection to the nearest substations or main transmission lines through which the project line obtains and delivers its energy, and either the general map or a small key map shall show the relation of the project to the main transmission system of the applicant in that region and to any previously licensed portions of said system. For short lines Exhibits J and K may be combined in one map.

* * * * *

Exhibit V. As prescribed by §§ 4.40 to 4.42 inclusive for applications for proposed major projects insofar as said requirements are applicable to transmission lines.

(E) The amendment ordered herein shall be effective as to all applications filed on or after January 1, 1971.

(F) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-16400; Filed, Dec. 7, 1970; 8:45 a.m.]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7079]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Personal Holding Company Dividends After the Close of Taxable Year

In order to conform the Income Tax Regulations (26 CFR Part 1) under section 563 to section 914 of the Tax Reform Act of 1969 (83 Stat. 723), such regulations are amended to read as follows:

PARAGRAPH 1. Section 1.563 is amended by revising subsection (b) (2) of section 563 and adding a historical note to read as follows:

§ 1.563 Statutory provisions; rules relating to dividends paid after close of taxable year.

SEC. 563. *Rules relating to dividends paid after close of taxable year*—(a) *Accumulated earnings tax.* * * *

(b) *Personal holding company tax.* * * *

(2) 20 percent of the sum of the dividends paid during the taxable year, computed without regard to this subsection.

[Sec. 563 as amended by sec. 914(a), Tax Reform Act (83 Stat. 723)]

PAR. 2. Section 1.563-2 is revised to read as follows:

§ 1.563-2 Personal holding company tax.

In the case of a personal holding company subject to the provisions of section 541, dividends paid after the close of the taxable year and before the 15th day of the third month thereafter shall be included in the computation of the dividends paid deduction for the taxable year only if the taxpayer so elects in its return for such taxable year. The election shall be made by including such dividends in computing its dividends paid deduction. The amount of such dividends which may be included in computing the dividends paid deduction for the taxable year shall not exceed either—

(a) The undistributed personal holding company income of the corporation for the taxable year, computed without regard to this section, or

(b) In the case of a taxable year beginning after December 31, 1969, 20 percent (10 percent, in the case of a taxable year beginning before Jan. 1, 1970) of the sum of the dividends paid during the taxable year (not including consent dividends), computed without regard to this section.

In computing the amount of the dividends paid deduction allowable for any taxable year, the amount allowed by reason of section 563(b) for any preceding taxable year is considered a dividend paid in such preceding taxable year and not in the year of actual distribution. Thus, a double deduction is not allowable.

Because this Treasury decision merely liberalizes rules for relating to the payment of dividends after the close of the taxable year and the amendment is purely technical, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under 5 U.S.C. 553(b), or subject to the effective date limitation of 5 U.S.C. 553(d).

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] RANDOLPH W. THROWER, *Commissioner of Internal Revenue.*

Approved: December 3, 1970.

EDWIN S. COHEN, *Assistant Secretary of the Treasury.*

[F.R. Doc. 70-16454; Filed, Dec. 7, 1970; 8:49 a.m.]

Title 30—MINERAL RESOURCES

Chapter I—Bureau of Mines, Department of the Interior

PART 55—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC OPEN PIT MINES

Miscellaneous Amendments

There was published in the FEDERAL REGISTER for June 24, 1970 (35 F.R. 10299), a notice of proposed rulemaking

which set forth proposals to amend, revise or redesignate health and safety standards which had either been proposed or promulgated for metal and nonmetallic open pit mines under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721–740). It was also proposed to add to Part 55 a new § 55.24 concerning a procedure by which the Director, Bureau of Mines may permit variances to mandatory standards in Part 55.

Interested persons and persons who were adversely affected by any proposal to amend or revise a stand designated as mandatory, or by a proposal to redesignate a standard as mandatory, were afforded a period of 45 days from the date of publication of the notice within which to submit written data, views, or arguments and to file written objections and request a hearing. The data, views, arguments and objections received have been fully and carefully considered. The standards set forth below are those upon which no request for a hearing was received or those upon which requests for hearings were received but which were subsequently withdrawn.

Any proposal published on June 24, 1970, to amend, revise, or redesignate a standard which does not appear below is hereby withdrawn and no action will be taken on such proposals until further notice of proposed rulemaking is published. Standards which were promulgated on July 31, 1969 (34 F.R. 12503), and February 25, 1970 (35 F.R. 3660), for which changes were proposed in the June 24, 1970, notice of proposed rulemaking, but which are not changed herewith, shall remain in force as promulgated and are not republished here.

Pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721–740), the standards of Part 55, Title 30 of the Code of Federal Regulations set forth below, as amended, revised, or redesignated shall become effective 30 days after the date of publication of this notice in the FEDERAL REGISTER, except that § 55.24 *Variances* shall become effective on the date of publication.

FRED J. RUSSELL,
Acting Secretary of the Interior.

DECEMBER 3, 1970.

§ 55.3 Ground control.

* * * * *

55.3–4 *Mandatory.* Safe means for scaling pit banks shall be provided. Hazardous banks shall be scaled before other work is performed in the hazardous bank area.

* * * * *

§ 55.4 Fire prevention and control.

* * * * *

55.4–23 *Mandatory.* Firefighting equipment which is provided on the mine property shall be strategically located, readily accessible, plainly marked, properly maintained, and inspected periodically. Records shall be kept of such inspections.

* * * * *

55.4–40 *Mandatory.* Fire alarm systems shall be provided and maintained in operating condition or adequate fire alarm procedures shall be established to warn promptly all persons endangered by a fire.

* * * * *

§ 55.5 Air quality.

55.5–1 *Mandatory.* Except as permitted by standard 55.5–5:

(a) The exposure to airborne contaminants of a person working in a mine shall not exceed, on the basis of a time-weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the most recent edition of the Conference's publication entitled "Threshold Limit Values of Airborne Contaminants." Excursions above the listed threshold limit values shall not be of a greater magnitude than is characterized as permissible by the Conference. This paragraph (a) does not apply to airborne contaminants given a "C" designation by the Conference—for example, nitrogen dioxide.

(b) Employees shall be withdrawn from areas in which there is a concentration of an airborne contaminant given a "C" designation by the Conference which exceeds the threshold limit value (ceiling "C" limit) listed for that contaminant.

* * * * *

55.55–D *Mandatory.* Respirators shall not be substituted for environmental control measures. However, where environmental controls have not been developed or when necessary by nature of the work involved (for example, welding, sandblasting, lead burning), a person may work for reasonable periods of time in concentrations of airborne contaminants which exceed ceiling "C" limits or the limit of permissible excursions referred to in standard 55.5–1, if such person wears a respiratory protective device approved by the Bureau of Mines as protection against the particular hazards involved.

§ 55.6 Explosives.

* * * * *

55.6–5 *Mandatory.* Areas surrounding magazines or facilities for the storage of blasting agents shall be kept clear of all trash and other unnecessary combustible materials for a distance not less than 25 feet in all directions.

* * * * *

55.6–8 *Mandatory.* Ammonium nitrate-fuel oil blasting agents shall be physically separated from other explosives, safety fuse, or detonating cord stored in the same magazine and in such a manner that oil does not contaminate the other explosives, safety fuse, or detonating cord.

* * * * *

55.6–45 *Mandatory.* Vehicles containing explosives or detonators shall not be taken to a repair garage or shop for any purpose.

* * * * *

55.6–50 *Mandatory.* Other materials or supplies shall not be placed on or in the cargo space of a conveyance containing explosives, detonating cord or detonators, except for safety fuse and except for properly secured, nonsparking equipment used expressly in the handling of such explosives, detonating cord or detonators.

* * * * *

55.6–56 *Mandatory.* Substantial, nonconductive, closed containers shall be used to carry explosives, other than blasting agents, to blasting sites.

* * * * *

55.6–65 *Mandatory.* Vehicles containing detonators or explosives, other than blasting agents, shall not be left unattended except in blasting areas where loading or charging is in progress.

* * * * *

55.6–90 *Mandatory.* Persons who use or handle explosives or detonators shall be experienced men who understand the hazards involved; trainees shall do such work only under the supervison of and in the immediate presence of experienced men.

55.6–91 *Mandatory.* Blasting operations shall be under the direct control of authorized persons.

* * * * *

55.6–101 *Mandatory.* No tamping shall be done directly on a capped primer.

* * * * *

55.6–112 *Mandatory.* The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all men concerned with blasting.

55.6–113 *Mandatory.* When firing from 1 to 15 blastholes with safety fuse ignited individually using hand-held lighters, the fuses shall be of such lengths to provide the minimum burning time specified in the following table for a particular size round:

Number of holes in a round	*Minimum burning time, minutes*
1	2
2–5	2⅔
6–10	3⅓
11–15	5

In no case shall any 40-second-per-foot safety fuse less than 36 inches long or any 30-second-per-foot safety fuse less than 48 inches long be used.

* * * * *

55.6–115 [Revoked]

* * * * *

55.6–119 *Mandatory.* Electric detonators of different brands shall not be used in the same round.

* * * * *

55.6–131 *Mandatory.* Power sources shall be suitable for the number of electric detonators to be fired and for the type of circuits used.

* * * * *

55.6–161 *Mandatory.* If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location and no one shall return to the hole until the danger has passed, but in no case within 1 hour.

* * * * *

§ 55.7 Drilling.

* * * * *

55.7–4 *Mandatory.* Men shall not be on a mast while the drill-bit is in operation unless they are provided with a safe platform from which to work and they are required to use safety belts to avoid falling.

* * * * *

§ 55.12 Electricity.

* * * * *

55.12–16 *Mandatory.* Electrical equipment shall be deenergized before work is done on such equipment. Switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Such locks, or preventative devices shall be removed only by the persons who installed them or by authorized personnel.

55.12–17 *Mandatory.* Power circuits shall be deenergized before work is done on such circuits unless hot-line tools are used. Suitable warning signs shall be posted by the individuals who are to do the work. Switches shall be locked out or other measures taken which shall prevent the power circuits from being energized without the knowledge of the individuals working on them. Such locks,

signs, or preventative devices shall be removed only by the person who installed them or by authorized personnel.

* * * * *

55.12-36 *Mandatory.* Fuses shall not be removed or replaced by hand in an energized circuit, and they shall not otherwise be removed or replaced in an energized circuit unless equipment and techniques especially designed to prevent electrical shock are provided and used for such purpose.

* * * * *

§ 55.15 Personal protection.

* * * * *

55.15-3 *Mandatory.* All persons shall wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.

55.15-4 *Mandatory.* All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.

* * * * *

§ 55.19 Man hoisting.

* * * * *

55.19-92 *Mandatory.* A method shall be provided to signal the hoist operator from cages or other conveyances at any point in the shaft.

* * * * *

55.19-108 *Mandatory.* When men are working in a shaft "Men Working in Shaft" signs shall be posted at all devices controlling hoisting operations that may endanger such men.

* * * * *

§ 55.24 Variances.

55.24-1 Except as provided in subsection 55.24-7, the Director, Bureau of Mines, may, in accordance with the provisions of this § 55.24, permit a variance from a mandatory standard in this part. The Director may permit such a variance only by means of a written decision specifically describing the variance permitted and the restrictions and conditions to be observed and finding that, in the circumstances, the health and safety of all persons which the mandatory standard is designed to protect will be no less assured under the variance permitted. The Director may, in writing delegate the authority conferred by this § 55.24 to the Deputy Director—Health and Safety, the Assistant Director, Metal and Nonmetal Mine Health and Safety, and the Metal and Nonmetal Mine Health and Safety District Managers.

55.24-2 An application for a variance must be in writing and filed with the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240. A copy of the application must be mailed or otherwise delivered to the District Manager of the Metal and Nonmetal Mine Health and Safety District of the Bureau of Mines in which the mine is located and a copy must be mailed or otherwise delivered to the State agency responsible for health and safety in the mine.

55.24-3 Before an application for a variance is filed, the person making such application shall give notice of the contents of the application to all persons employed in the area of the mine that would be affected by the variance if granted. Such notice may be given by the delivery of a copy to each such employee individually; or by the delivery of a copy of the application to an organization, agency or individual authorized by the employees to represent them; or by posting a copy on a bulletin board at the mine office or in some other appropriate place at the mine adequate to give notice to the employees. An application will be rejected if it does not show that the notice required by this subsection has been given.

55.24-4 An application for a variance must:

(a) Specify the mandatory standard or standards from which the variance is requested;

(b) Describe the variance requested;

(c) Identify the areas of the mine that would be affected by the variance;

(d) Give the reasons why the standard or standards cannot or should not be strictly complied with;

(e) Specify the time period for which the variance is requested;

(f) Describe the work assignments of persons employed in affected areas of the mine, specifying the number of persons having each work assignment;

(g) Explain how the health and safety of persons employed in the affected areas of the mine will be no less assured if the requested variance is granted than through strict compliance with the standard or standards;

(h) Indicate the authority of the person signing the application;

(i) Include a statement describing how, and on what dates, the notice required in subsection 55.24-3 was given.

55.24-5 For a period of 15 days following the date on which an application for a variance is filed, any interested person may submit to the Director, Bureau of Mines, written data, views, or arguments, respecting the application. Copies of such comments shall be mailed or otherwise delivered to the District Manager of the Health and Safety District of the Bureau of Mines in which the mine is located, to the State agency responsible for health and safety in the mine, and to the person making the application. The Director may hold a public hearing if he determines that such a hearing would contribute to his consideration of the application. The Director shall issue a decision on an application promptly following the expiration of the period of 15 days and the conclusion of a hearing, if any.

55.24-6 Notwithstanding the provisions of subsection 55.24-5, a temporary variance from a mandatory standard may be approved before the expiration of the 15-day period for a specified time not to exceed 45 calendar days after receipt of the application, if the application is for a variance that would, in the judgment of the Director, clearly provide a level of health and safety to the persons employed in the areas of the mine that would be affected thereby no less than would be provided by compliance with a particular mandatory standard.

55.24-7 This § 55.24 does not authorize the Director to permit a variance from any mandatory standard relating to exposure to concentrations of airborne contaminants or from any mandatory standard relating to exposure to concentrations of radon daughters.

[F.R. Doc. 70-16457; Filed, Dec. 7, 1970; 8:51 a.m.]

PART 56—HEALTH AND SAFETY STANDARDS—SAND, GRAVEL, AND CRUSHED STONE OPERATIONS

Miscellaneous Amendments

There was published in the FEDERAL REGISTER for June 24, 1970 (35 F.R. 10302), a notice of proposed rulemaking which set forth proposals to amend, revise or redesignate health and safety standards which had either been proposed or promulgated for sand, gravel, and crushed stone operations under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740). It was also proposed to add to Part 56 a new § 56.24 concerning a procedure by which the Director, Bureau of Mines may permit variances to mandatory standards in Part 56.

Interested persons and persons who were adversely affected by any proposal to amend or revise a standard designated as mandatory, or by a proposal to redesignate a standard as mandatory, were afforded a period of 45 days from the date of publication of the notice within which to submit written data, views, or arguments and to file written objections and request a hearing. The data, views, arguments and objections received have been fully and carefully considered. The standards set forth below are those upon which no request for a hearing was received or those upon which requests for hearings were received but which were subsequently withdrawn.

Any proposal published on June 24, 1970, to amend, revise, or redesignate a standard which does not appear below is hereby withdrawn and no action will be taken on such proposals until further notice of proposed rulemaking is published. Standards which were promulgated on July 31, 1969 (34 F.R. 12510), and February 25, 1970 (35 F.R. 3665), for which changes were proposed in the June 24, 1970, notice of proposed rulemaking, but which are not changed herewith, shall remain in force as promulgated and are not republished here.

Pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721-740), the standards of Part 56, Title 30 of the Code of Federal Regulations set forth below, as amended, revised, or redesignated shall become effective 30 days after the date of publication of this notice in the FEDERAL REGISTER, except that § 56.24 *Variances* shall become effective on the date of publication.

FRED J. RUSSELL,
Acting Secretary of the Interior.

DECEMBER 3, 1970.

§ 56.3 Ground control.

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56.3-4 *Mandatory.* Safe means for scaling pit-banks shall be provided. Hazardous banks shall be scaled before other work is performed in the hazardous bank area.

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§ 56.4 Fire prevention and control.

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56.4-23 *Mandatory.* Firefighting equipment which is provided on the mine property shall be strategically located, readily accessible, plainly marked, properly maintained, and inspected periodically. Records shall be kept of such inspections.

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56.4-40 *Mandatory.* Fire alarm systems shall be provided and maintained in operating condition or adequate fire alarm procedures shall be established to warn promptly all persons endangered by a fire.

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§ 56.5 Air quality.

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56.5–1 *Mandatory.* Except as permitted by standard 56.5–5:

(a) The exposure to airborne contaminants of a person working in a mine shall not exceed, on the basis of a time-weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the most recent edition of the Conference's publication entitled "Threshold Limit Values of Airborne Contaminants." Excursions above the listed threshold limit values shall not be of a greater magnitude than is characterized as permissible by the Conference. This paragraph (a) does not apply to airborne contaminants given a "C" designation by the Conference—for example, nitrogen dioxide.

(b) Employees shall be withdrawn from areas in which there is a concentration of an airborne contaminant given a "C" designation by the Conference which exceeds the threshold limit value (ceiling "C" limit) listed for that contaminant.

* * * * *

56.5–5 *Mandatory.* Respirators shall not be substituted for environmental control measures. However, where environmental controls have not been developed or when necessary by nature of the work involved (for example, welding, sand blasting, lead burning), a person may work for reasonable periods of time in concentrations of airborne contaminants which exceed ceiling "C" limits or the limit of permissible excursions referred to in standard 56.5–1, if such person wears a respiratory protective device approved by the Bureau of Mines as protection against the particular hazards involved.

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§ 56.6 Explosives.

56.6–8 *Mandatory.* Ammonium nitrate-fuel oil blasting agents shall be physically separated from other explosives, safety fuse, or detonating cord stored in the same magazine and in such a manner that oil does not contaminate the other explosives, safety fuse, or detonating cord.

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56.6–45 *Mandatory.* Vehicles containing explosives or detonators shall not be taken to a repair garage or shop for any purpose.

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56.6–50 *Mandatory.* Other materials or supplies shall not be placed on or in the cargo space of a conveyance containing explosives, detonating cord or detonators, except for safety fuse and except for properly secured, nonsparking equipment used expressly in the handling of such explosives, detonating cord or detonators.

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56.6–65 *Mandatory.* Vehicles containing detonators or explosives, other than blasting agents, shall not be left unattended except in blasting areas where loading or charging is in progress.

* * * * *

56.6–90 *Mandatory.* Persons who use or handle explosive or detonators shall be experienced men who understand the hazards involved; trainees shall do such work only under the supervision of and in the immediate presence of experienced men.

56.6–91 *Mandatory.* Blasting operations shall be under the direct control of authorized persons.

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56.6–101 *Mandatory.* No tamping shall be done directly on a capped primer.

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56.6–112 *Mandatory.* The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all men concerned with blasting.

56.6–113 *Mandatory.* When firing from 1 to 15 blastholes with safety fuse ignited individually using hand-held lighters, the fuses shall be of such lengths to provide the minimum burning time specified in the following table for a particular size round:

Number of holes in a round	*Minimum burning time, minutes*
1	2
2–5	2⅔
6–10	3⅓
11–15	5

In no case shall any 40-second-per-foot safety fuse less than 36 inches long or any 30-second-per-foot safety fuse less than 48 inches long be used.

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56.6–115 [Revoked]

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56.6–119 *Mandatory.* Electric detonators of different brands shall not be used in the same round.

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56.6–131 *Mandatory.* Power sources shall be suitable for the number of electric detonators to be fired and for the type of circuits used.

* * * * *

56.6–161 *Mandatory.* If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location and no one shall return to the hole until the danger has passed, but in no case within 1 hour.

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§ 56.7 Drilling.

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56.7–4 *Mandatory.* Men shall not be on a mast while the drill-bit is in operation unless they are provided with a safe platform from which to work and they are required to use safety belts to avoid falling.

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§ 56.12 Electricity.

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56.12–16 *Mandatory.* Electrical equipment shall be deenergized before work is done on such equipment. Switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Such locks, or preventative devices shall be removed only by the persons who installed them or by authorized personnel.

56.12–17 *Mandatory.* Power circuits shall be deenergized before work is done on such circuits unless hot-line tools are used. Suitable warning signs shall be posted by the individuals who are to do the work. Switches shall be locked out or other measures taken which shall prevent the power circuits from being energized without the knowledge of the individuals working on them. Such locks, signs, or preventative devices shall be removed only by the person who installed them or by authorized personnel.

* * * * *

56.12–36 *Mandatory.* Fuses shall not be removed or replaced by hand in an energized circuit, and they shall not otherwise be removed or replaced in an energized circuit unless equipment and techniques especially designed to prevent electrical shock are provided and used for such purpose.

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§ 56.15 Personal protection.

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56.15–3 *Mandatory.* All persons shall wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.

56.15–4 *Mandatory.* All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.

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§ 56.19 Man hoisting.

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56.19–92 *Mandatory.* A method shall be provided to signal the hoist operator from cages or other conveyances at any point in the shaft.

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56.19–108 *Mandatory.* When men are working in a shaft "Men Working in Shaft" signs shall be posted at all devices controlling hoisting operations that may endanger such men.

* * * * *

§ 56.24 Variances.

56.24–1 Except as provided in subsection 56.24–7, the Director, Bureau of Mines, may, in accordance with the provisions of this § 56.24, permit a variance from a mandatory standard in this part. The Director may permit such a variance only by means of a written decision specifically describing the variance permitted and the restrictions and conditions to be observed and finding that, in the circumstances, the health and safety of all persons which the mandatory standard is designed to protect will be no less assured under the variance permitted. The Director may, in writing delegate the authority conferred by this § 56.24 to the Deputy Director—Health and Safety, the Assistant Director, Metal and Nonmetal Mine Health and Safety, and the Metal and Nonmetal Mine Health and Safety District Managers.

56.24–2 An application for a variance must be in writing and filed with the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240. A copy of the application must be mailed or otherwise delivered to the District Manager of the Metal and Nonmetal Mine Health and Safety District of the Bureau of Mines in which the mine is located and a copy must be mailed or otherwise delivered to the State agency responsible for health and safety in the mine.

56.24–3 Before an application for a variance is filed, the person making such application shall give notice of the contents of the application to all persons employed in the area of the mine that would be affected by the variance if granted. Such notice may be given by the delivery of a copy to each such employee individually; or by the delivery of a copy of the application to an organization, agency, or individual authorized by the employees to represent them; or by posting a copy on a bulletin board at the mine office or in some other appropriate place at the mine adequate to give notice to the employees. An application will be rejected if it does not show that the notice required by this subsection has been given.

56.24–4 An application for a variance must:

(a) Specify the mandatory standard or standards from which the variance is requested;

(b) Describe the variance requested;

(c) Identify the areas of the mine that would be affected by the variance;

(d) Give the reasons why the standard or standards cannot or should not be strictly complied with;

(e) Specify the time period for which the variance is requested;

(f) Describe the work assignments of persons employed in affected areas of the mine, specifying the number of persons having each work assignment;

(g) Explain how the health and safety of persons employed in the affected areas of the mine will be no less assured if the requested variance is granted than through strict compliance with the standard or standards;

(h) Indicate the authority of the person signing the application;

(i) Include a statement describing how, and on what dates, the notice required in subsection 55.24-3 was given.

56.24-5 For a period of 15 days following the date on which an application for a variance is filed, any interested person may submit to the Director, Bureau of Mines, written data, views, or arguments, respecting the application. Copies of such comments shall be mailed or otherwise delivered to the District Manager of the Health and Safety District of the Bureau of Mines in which the mine is located, to the State agency responsible for health and safety in the mine, and to the person making the application. The Director may hold a public hearing if he determines that such a hearing would contribute to his consideration of the application. The Director shall issue a decision on an application promptly following the expiration of the period of 15 days and the conclusion of a hearing, if any.

56.24-6 Notwithstanding the provisions of subsection 56.24-5, a temporary variance from a mandatory standard may be approved before the expiration of the 15-day period for a specified time not to exceed 45 calendar days after receipt of the application, if the application is for a variance that would, in the judgment of the Director, clearly provide a level of health and safety to the persons employed in the areas of the mine that would be affected thereby no less than would be provided by compliance with a particular mandatory standard.

56.24-7 This § 56.24 does not authorize the Director to permit a variance from any mandatory standard relating to exposure to concentrations of airborne contaminants or from any mandatory standard relating to exposure to concentrations of radon daughters.

[F.R. Doc. 70-16458; Filed, Dec. 7, 1970; 8:51 a.m.]

PART 57—HEALTH AND SAFETY STANDARDS—METAL AND NONMETALLIC UNDERGROUND MINES

Miscellaneous Amendments

There was published in the FEDERAL REGISTER for June 24, 1970 (35 F.R. 10305), a notice of proposed rulemaking which set forth proposals to amend, revise or redesignate health and safety standards which had either been proposed or promulgated for metal and nonmetallic underground mines under the Federal Metal and Nonmetallic Mine Safety Act (30 U.S.C. 721-740). It was also proposed to add to Part 57 a new § 57.24 concerning a procedure by which the Director, Bureau of Mines may permit variances to mandatory standards in Part 57.

Interested persons and persons who were adversely affected by any proposal to amend or revise a standard designated as mandatory, or by a proposal to redesignate a standard as mandatory, were afforded a period of 45 days from the date of publication of the notice within which to submit written data, views, or arguments and to file written objections and request a hearing. The data, views, arguments and objections received have been fully and carefully considered. The standards set forth below are those upon which no request for a hearing was received or those upon which requests for hearings were received but which were subsequently withdrawn.

Any proposal published on June 24, 1970, to amend, revise, or redesignate a standard which does not appear below is hereby withdrawn and no action will be taken on such proposals until further notice of proposed rulemaking is published. Standards which were promulgated on July 31, 1969 (34 F.R. 12516), and February 25, 1970 (35 F.R. 3670), for which changes were proposed in the June 24, 1970, notice of proposed rulemaking, but which are not changed herewith, shall remain in force as promulgated and are not republished here.

Pursuant to the authority vested in the Secretary of the Interior under the Federal Metal and Nonmetallic Mine Safety Act (80 Stat. 772; 30 U.S.C. 721-740), the standards of Part 57, Title 30 of the Code of Federal Regulations set forth below, as amended, revised, or redesignated shall become effective 30 days after the date of publication of this notice in the FEDERAL REGISTER, except that § 57.24 *Variances* shall become effective on the date of publication.

FRED J. RUSSELL,
Acting Secretary of the Interior.

DECEMBER 3, 1970.

§ 57.3 Ground control.

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57.3-4 *Mandatory.* Safe means for scaling pit-banks shall be provided. Hazardous banks shall be scaled before other work is performed in the hazardous bank area.

* * * * *

§ 57.4 Fire prevention and control.

57.4-23 *Mandatory.* Firefighting equipment which is provided on the mine property shall be strategically located, readily accessible, plainly marked, properly maintained, and inspected periodically. Records shall be kept of such inspections.

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57.4-40 *Mandatory.* Fire alarm systems shall be provided and maintained in operating condition or adequate firm alarm procedures shall be established to warn promptly all persons endangered by a fire.

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57.4-67 *Mandatory.* A mine rescue station equipped with at least 10 sets of approved and properly maintained 2-hour self-contained breathing apparatus, adequate supplies, and spare parts shall be maintained at mines employing 75 or more men underground or, in lieu thereof, the mine shall be affiliated with a central mine rescue station.

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57.4-70 *Mandatory.* At mines employing 75 or more men underground, at least two rescue crews (10 Men) shall be trained at least annually in the use, care, and limitations of self-contained breathing and firefighting apparatus and in mine-rescue procedures. Smaller mines shall have at least one man so trained for each 10 men employed underground.

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§ 57.5 Air quality.

57.5-1 *Mandatory.* Except as permitted by standard 57.5-5:

(a) The exposure to airborne contaminants of a person working in a mine shall not exceed, on the basis of a time-weighted average, the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists, as set forth and explained in the most recent edition of the Conference's publication entitled "Threshold Limit Values of Airborne Contaminants." Excursions above the listed threshold limit values shall not be of a greater magnitude than is characterized as permissible by the Conference. This paragraph (a) does not apply to airborne contaminants given a "C" designation by the Conference—for example, nitrogen dioxide.

(b) Employees shall be withdrawn from areas in which there is a concentration of an airborne contaminant given a "C" designation by the Conference which exceeds the threshold limit value (ceiling "C" limit) listed for that contaminant.

* * * * *

57.5-5 *Mandatory.* Respirators shall not be substituted for environmental control measures. However, where environmental controls have not been developed or when necessary by nature of the work involved (for example, welding, sand blasting, lead burning), a person may work for reasonable periods of time in concentrations of airborne contaminants which exceed ceiling "C" limits or the limit of permissible excursions referred to in standards 57.5-1, if such person wears a respiratory protective device approved by the Bureau of Mines as protection against the particular hazards involved.

* * * * *

57.5-42 *Mandatory.* If levels of permissible exposures to concentrations of radon daughters different from those prescribed in 57.5-38 are recommended by the Environmental Protection Agency and approved by the President, no employee shall be permitted to receive exposures in excess of those levels after the effective dates established by the Agency.

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§ 57.6 Explosives.

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57.6-5 *Mandatory.* Areas surrounding magazines or facilities for the storage of blasting agents shall be kept clear of all trash and other unnecessary combustible materials for a distance not less than 25 feet in all directions.

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57.6-8 *Mandatory.* Ammonium nitrate-fuel oil blasting agents shall be physically separated from other explosives, safety fuse, or detonating cord stored in the same magazine and in such a manner that oil does not

contaminate the other explosives, safety fuse, or detonating cord.

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57.6-45 *Mandatory.* Vehicles containing explosives or detonators shall not be taken to a repair garage or shop for any purpose.

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57.6-50 *Mandatory.* Other materials or supplies shall not be placed on or in the cargo space of a conveyance containing explosives, detonating cord or detonators, except for safety fuse and except for properly secured, nonsparking equipment used expressly in the handling of such explosives, detonating cord or detonators.

* * * * *

57.6-56 *Mandatory.* Substantial, nonconductive, closed containers shall be used to carry explosives, other than blasting agents, to blasting sites.

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57.6-65 *Mandatory.* Vehicles containing detonators or explosives, other than blasting agents, shall not be left unattended except in blasting areas where loading or charging is in progress.

* * * * *

57.6-75 *Mandatory.* Men assigned to and responsible for hoisting shall be notified whenever explosives or detonators are being transported in a shaft conveyance.

57.6-76 *Mandatory.* Hoisting in adjacent shaft compartments shall be stopped when explosives or detonators are being handled.

* * * * *

57.6-90 *Mandatory.* Persons who use or handle explosives or detonators shall be experienced men who understand the hazards involved; trainees shall do such work only under the supervision of and in the immediate presence of experienced men.

57.6-91 *Mandatory.* Blasting operations shall be under the direct control of authorized persons.

* * * * *

57.6-101 *Mandatory.* No tamping shall be done directly on a capped primer.

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57.6-112 *Mandatory.* The burning rate of the safety fuse in use at any time shall be measured, posted in conspicuous locations, and brought to the attention of all men concerned with blasting.

57.6-113 *Mandatory.* When firing from 1 to 15 blastholes with safety fuse ignited individually using hand-held lighters, the fuses shall be of such lengths to provide the minimum burning time specified in the following table for a particular size round:

Number of holes in a round	*Minimum burning time, minutes*
1	2
2-5	2⅔
6-10	3⅓
11-15	5

In no case shall any 40-second-per-foot safety fuse less than 36 inches long or any 30-second-per-foot safety fuse less than 48 inches long be used.

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57.6-115 [Revoked]

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57.6-119 *Mandatory.* Electric detonators of different brands shall not be used in the same round.

* * * * *

57.6-131 *Mandatory.* Power sources shall be suitable for the number of electric detonators to be fired and for the type of circuits used.

* * * * *

57.6-161 *Mandatory.* If explosives are suspected of burning in a hole, all persons in the endangered area shall move to a safe location and no one shall return to the hole until the danger has passed, but in no case within 1 hour.

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§ 57.7 Drilling.

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57.7-4 *Mandatory.* Men shall not be on a mast while the drill-bit is in operation unless they are provided with a safe platform from which to work and they are required to use safety belts to avoid falling.

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§ 57.12 Electricity.

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57.12-16 *Mandatory.* Electrical equipment shall be deenergized before work is done on such equipment. Switches shall be locked out or other measures taken which shall prevent the equipment from being energized without the knowledge of the individuals working on it. Such locks, or preventative devices shall be removed only by the persons who installed them or by authorized personnel.

57.12-17 *Mandatory.* Power circuits shall be deenergized before work is done on such circuits unless hot-line tools are used. Suitable warning signs shall be posted by the individuals who are to do the work. Switches shall be locked out or other measures taken which shall prevent the power circuits from being energized without the knowledge of the individuals working on them. Such locks, signs, or preventative devices shall be removed only by the person who installed them or by authorized personnel.

* * * * *

57.12-36 *Mandatory.* Fuses shall not be removed or replaced by hand in an energized circuit, and they shall not otherwise be removed or replaced in an energized circuit unless equipment and techniques especially designed to prevent electrical shock are provided and used for such purpose.

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57.12-80 *Mandatory.* Trolley wires and bare power conductors shall be guarded at man-trip loading and unloading points, and at shaft stations. Where such trolley wires and bare power conductors are less than 7 feet above the rail, they shall be guarded at all points where men work or pass regularly beneath.

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57.12-89 [Revoked]

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§ 57.15 Personal protection.

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57.15-3 *Mandatory.* All persons shall wear suitable protective footwear when in or around an area of a mine or plant where a hazard exists which could cause an injury to the feet.

57.15-4 *Mandatory.* All persons shall wear safety glasses, goggles, or face shields or other suitable protective devices when in or around an area of a mine or plant where a hazard exists which could cause injury to unprotected eyes.

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§ 57.19 Man hoisting.

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57.19-92 *Mandatory.* A method shall be provided to signal the hoist operator from cages or other conveyances at any point in the shaft.

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57.19-108 *Mandatory.* When men are working in a shaft "Men Working in Shaft" signs shall be posted at all devices controlling hoisting operations that may endanger such men.

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§ 57.21 Gassy mines.

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57.21-29 *Mandatory.* A booster fan shall be:

(a) Equipped with an automatic device to give alarm when the fan slows or stops, or equipped with a device that automatically cuts off the power in the area affected if the fan slows or stops.

(b) Provided with air locks, the doors of which open automatically if the fan stops.

* * * * *

57.24-42 *Mandatory.* Air that has passed through an abandoned panel or area which is inaccessible or unsafe for inspection shall not be used to ventilate any working place in such mine. No air which has been used to ventilate an area from which the pillars have been removed shall be used to ventilate any working place in such mine, except that such air, if it does not contain 0.25 volume per centum or more of methane, may be used to ventilate enough advancing working places immediately adjacent to the line of retreat to maintain an orderly sequence of pillar recovery on a set of entries.

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§ 57.24 Variances.

57.24-1 Except as provided in subsection 57.24-7, the Director, Bureau of Mines, may, in accordance with the provisions of this § 57.24, permit a variance from a mandatory standard in this part. The Director may permit such a variance only by means of a written decision specifically describing the variance permitted and the restrictions and conditions to be observed and finding that, in the circumstances, the health and safety of all persons which the mandatory standard is designed to protect will be no less assured under the variance permitted. The Director may, in writing delegate the authority conferred by this § 57.24 to the deputy Director—Health and Safety, the Assistant Director, Metal and Nonmetal Mine Health and Safety, and the Metal and Nonmetal Mine Health and Safety District Managers.

57.24-2 An application for a variance must be in writing and filed with the Director, Bureau of Mines, Department of the Interior, Washington, D.C. 20240. A copy of the application must be mailed or otherwise delivered to the District Manager of the Metal and Nonmetal Mine Health and Safety District of the Bureau of Mines in which the mine is located and a copy must be mailed or otherwise delivered to the State agency responsible for health and safety in the mine.

57.24-3 Before an application for a variance is filed, the person making such application shall give notice of the contents of the application to all persons employed in the area of the mine that would be affected by the variance if granted. Such notice may be given by the delivery of a copy to each such employee individually; or by the delivery of a copy of the application to an organization, agency, or individual authorized by the employees to represent them; or by posting a copy on a bulletin board at the mine office or in some other appropriate place at the mine adequate to give notice to the employees. An application will be rejected if it does not show that the notice required by this subsection has been given.

57.24–4 An application for a variance must:

(a) Specify the mandatory standard or standards from which the variance is requested;

(b) Describe the variance requested;

(c) Identify the areas of the mine that would be affected by the variance;

(d) Give the reasons why the standard or standards cannot or should not be strictly complied with;

(e) Specify the time period for which the variance is requested;

(f) Describe the work assignments of persons employed in affected areas of the mine, specifying the number of persons having each work assignment;

(g) Explain how the health and safety of persons employed in the affected areas of the mine will be no less assured if the requested variance is granted than through strict compliance with the standard or standards;

(h) Indicate the authority of the person signing the application;

(i) Include a statement describing how, and on what dates, the notice required in subsection 57.24–3 was given.

57.24–5 For a period of 15 days following the date on which an application for a variance is filed, any interested person may submit to the Director, Bureau of Mines, written data, views, or arguments, respecting the application. Copies of such comments shall be mailed or otherwise delivered to the District Manager of the Health and Safety District of the Bureau of Mines in which the mine is located, to the State agency responsible for health and safety in the mine, and to the person making the application. The Director may hold a public hearing if he determines that such a hearing would contribute to his consideration of the application. The Director shall issue a decision on an application promptly following the expiration of the period of 15 days and the conclusion of a hearing, if any.

57.24–6 Notwithstanding the provisions of subsection 57.24–5, a temporary variance from a mandatory standard may be approved before the expiration of the 15-day period for a specified time not to exceed 45 calendar days after receipt of the application, if the application is for a variance that would, in the judgment of the Director, clearly provide a level of health and safety to the persons employed in the areas of the mine that would be affected thereby no less than would be provided by compliance with a particular mandatory standard.

57.24–7 This § 57.24 does not authorize the Director to permit a variance from any mandatory standard relating to exposure to concentrations of airborne contaminants or from any mandatory standard relating to exposure to concentrations of radon daughters.

[F.R. Doc. 70–16459; Filed, Dec. 7, 1970; 8:51 a.m.]

Chapter V—Interim Compliance Panel (Coal Mine Health and Safety)

PART 503—PERMITS FOR NONCOMPLIANCE WITH THE ELECTRIC FACE EQUIPMENT STANDARD—NONGASSY MINES BELOW THE WATERTABLE AND CERTAIN NONGASSY MINES ABOVE THE WATERTABLE

Miscellaneous Amendments

The Interim Compliance Panel has determined that there is one category of underground coal mine which is subject to the provisions of paragraph (1) (D) of subsection 305(a) of the Federal Coal Mine Health and Safety Act of 1969 but which was not covered by the Panel's regulation, 30 CFR Part 503 (35 F.R. 18274, Dec. 1, 1970). Accordingly, the Panel is amending Part 503 to include nongassy mines above the watertable which were opened during the 3-month period between December 30, 1969, and March 30, 1970, inclusive. Permits are not available for equipment which was not in use in connection with mining operations in the mine on March 30, 1970.

Nongassy mines above the watertable in which one or more openings were made before December 30, 1969, are not subject to this regulation.

The need for the immediate establishment of procedures for obtaining permits for noncompliance with the provisions of subsection 305(a) (1) (D) as to those mines covered by these amendments necessitates the immediate adoption of the amendments. The Panel finds that failure to adopt such procedures promptly would work to the detriment of those coal mine operators affected and that it is impracticable either to give notice of proposed rule making on, or to delay the effective date of, any of the provisions of these amendments.

Title 30 CFR, Part 503, is amended to include those mines above the watertable which were opened during the 3-month period between December 30, 1969 and March 30, 1970, inclusive. These amendments as set forth below are effective on publication in the FEDERAL REGISTER.

The heading of Part 503 is amended to read as set forth above.

Section 503.1 is amended to read as follows:

§ 503.1 Application of part.

This part applies to applications for permits for noncompliance and renewals thereof submitted in accordance with the provisions of sections 305(a) (6) and 305 (a) (7) of the Federal Coal Mine Health and Safety Act of 1969 and to requests for hearings conducted with respect to such applications. A permit for noncompliance may be issued to an operator only for electric face equipment used by the operator on March 30, 1970, in connection with mining operations in (a) an underground coal mine which has never been classified as gassy under any provision of law and which is located below the watertable, or (b) an underground coal mine which has never been classified as gassy under any provision of law and which is located above the watertable and in which one or more openings were made on or after December 30, 1969.

Section 503.2, *Definitions*, is amended by adding paragraph (i):

§ 503.2 Definitions.

* * * * *

(i) "Above the watertable" as it applies to a coal mine means an underground coal mine which is operated entirely in coal seams which are located at an elevation above a river or the tributary of a river into which a local surface water system naturally drains.

Paragraph (a) (5) of § 503.4, *Contents of applications for permits*, is amended to read as follows:

§ 503.4 Contents of applications for permits.

(a) * * *

(5) A statement whether such mine is above or below the watertable. In the event that it is above the watertable, a statement whether or not the original opening of such mine was made during the 3-month period between December 30, 1969 and March 30, 1970, inclusive; and

* * * * *

Paragraph (b) (1) of § 503.5, *Issuance of initial permits*, is amended to read as follows:

§ 503.5 Issuance of initial permits.

* * * * *

(b) * * *

(1) That the mine has never been classified as gassy under any provision of Federal or State law, and

(i) That it is below the watertable, or

(ii) In the event that such mine is above the watertable, that the original opening of such mine was made on or after December 30, 1969;

* * * * *

Dated: December 2, 1970.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

[F.R. Doc. 70–16504; Filed, Dec. 7, 1970; 8:51 a.m.]

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 101—Federal Property Management Regulations

SUBCHAPTER E—SUPPLY AND PROCUREMENT

PART 101–26—PROCUREMENT SOURCES AND PROGRAMS

Subpart 101–26.4—Purchase of Items From Federal Supply Schedule Contracts

PRICE REDUCTIONS ON MULTIPLE AWARD CONTRACTS

Section 101–26.408–5 is revised to delete the explanatory material which is technically inconsistent with the "Price Reductions" clause currently used in multiple award Federal Supply Schedule contracts.

Section 101–26.408–5 is revised to read as follows:

§ 101–26.408–5 Price reductions during contract period.

Each Federal Supply Schedule contract involving multiple awards (except those in which special escalation features may be required) contains a clause entitled "Price Reductions." In addition, the Federal Supply Schedule contains an instruction to using agencies, entitled "Notice of Purchase at Reduced Price,"

which provides that GSA contracting officers be notified of any such reductions. Agencies shall issue appropriate implementing procedures to insure that such notifications to GSA contracting officers are promptly furnished whenever a price reduction within the scope of the "Price Reductions" clause is accorded by a contractor.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Effective date. This regulation is effective upon publication in the FEDERAL REGISTER.

Dated: December 1, 1970.

ROBERT L. KUNZIG,
Administrator of General Services.

[F.R. Doc. 70-16416; Filed, Dec. 7, 1970; 8:46 a.m.]

Title 42—PUBLIC HEALTH

Chapter I—Public Health Service, Department of Health, Education, and Welfare

SUBCHAPTER G—PREVENTION, CONTROL, AND ABATEMENT OF AIR POLLUTION

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region

On May 20, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 7740) to amend Part 81 by designating the Joplin (Missouri)—Northeast Oklahoma (Oklahoma)—Southeast Kansas (Kansas)—Fayetteville (Arkansas) Interstate Air Quality Control Region, hereafter referred to as the Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on July 7, 1970. Due consideration has been given to all relevant material presented with the result that Benton and Washington Counties, in the State of Arkansas; Cherokee, Crawford, Labette, and Montgomery Counties, in the State of Kansas; and Adair, Cherokee, Mayes, Nowata, Rogers, Wagoner, and Washington Counties, in the State of Oklahoma, were deleted and the Region renamed the Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.65, as set forth below, designating the Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.65 Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region.

The Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Missouri:

Barton County.	McDonald County.
Jasper County.	Newton County.

In the State of Oklahoma:

Craig County.	Ottawa County.
Delaware County.	

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 9, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70-16505; Filed, Dec. 7, 1970; 8:51 a.m.]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Metropolitan Quad Cities Interstate Air Quality Control Region

On September 12, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 14406) to amend Part 81 by designating the Metropolitan Quad Cities Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 29, 1970. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.102, as set forth below, designating the Metropolitan Quad Cities Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.102 Metropolitan Quad Cities Interstate Air Quality Control Region.

The Metropolitan Quad Cities Interstate Air Quality Control Region (Illinois-Iowa) consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited:

In the State of Illinois:

Carroll County.	Rock Island County.
Henry County.	Whiteside County.
Mercer County.	

In the State of Iowa:

Clinton County.	Muscatine County.
Louisa County.	Scott County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 10, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70-16506; Filed, Dec. 7, 1970; 8:51 a.m.]

PART 81—AIR QUALITY CONTROL REGIONS, CRITERIA, AND CONTROL TECHNIQUES

Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region

On August 22, 1970, notice of proposed rule making was published in the FEDERAL REGISTER (35 F.R. 13459) to amend Part 81 by designating the Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region.

Interested persons were afforded an opportunity to participate in the rule making through the submission of comments, and a consultation with appropriate State and local authorities pursuant to section 107(a) of the Clean Air Act (42 U.S.C. 1857c-2(a)) was held on September 2, 1970. Due consideration has been given to all relevant material presented.

In consideration of the foregoing and in accordance with the statement in the notice of proposed rule making, § 81.92, as set forth below, designating the Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region, is adopted effective on publication.

§ 81.92 Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region.

The Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region consists of the territorial area encompassed by the boundaries of the following jurisdictions or described area (including the territorial area of all municipalities (as defined in section 302(f) of the Clean Air Act, 42 U.S.C. 1857h(f)) geographically located within the outermost boundaries of the area so delimited):

In the State of Louisiana:

Caldwell Parish.	Morehouse Parish.
Catahoula Parish.	Ouachita Parish.
Concordia Parish.	Richland Parish.
East Carroll Parish.	Tensas Parish.
Franklin Parish.	Union Parish.
La Salle Parish.	West Carroll Parish.
Madison Parish.	

In the State of Arkansas:

Ashley County.	Nevada County.
Bradley County.	Ouachita County.
Calhoun County.	Union County.

(Secs. 107(a), 301(a), 81 Stat. 490, 504; 42 U.S.C. 1857c-2(a), 1857g(a))

Dated: November 9, 1970.

JOHN T. MIDDLETON,
Commissioner, National Air Pollution Control Administration.

Approved: November 30, 1970.

ELLIOT L. RICHARDSON,
Secretary.

[F.R. Doc. 70-16507; Filed, Dec. 7, 1970; 8:51 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 4958]

[Anchorage 2695]

ALASKA

Powersite Classification No. 459, Powersite Cancellation No. 283, Partial Cancellation of Powersite Classification No. 221

By virtue of the authority contained in the Act of March 3, 1879, 20 Stat. 394, 43 U.S.C. § 31 (1964), and in section 24 of the Act of June 10, 1920, 41 Stat. 1075, as amended, 16 U.S.C. § 818 (1964), it is ordered as follows:

1. Subject to valid existing rights, the following described lands, which are under jurisdiction of the Secretary of Agriculture, are hereby classified as powersites so far as title to such lands and interests therein remain in the United States:

TONGASS NATIONAL FOREST

Vodopad River and Green Lake, Alaska (about 10 miles southeast of Sitka).

All lands adjacent to Vodopad River and Green Lake upstream from the outlet at Silver Bay which lie below an altitude of 400 feet above sea level. The Port Alexander (D-4) quadrangle map shows that the lands will lie wholly or in part within the following protracted land descriptions:

COPPER RIVER MERIDIAN

T. 56 S., R. 65 E. (unsurveyed),
Sec. 20, SE¼SE¼;
Sec. 21, S½SW¼;
Sec. 26, S½SW¼;
Sec. 27, SW¼NW¼, S½;
Sec. 28, S½NE¼, NW¼, N½SW¼, SE¼;
Sec. 29, NE¼, S½NW¼, N½SW¼;
Sec. 33, NE¼NE¼;
Sec. 34, NE¼, N½NW¼;
Sec. 35, N½, N½SW¼, N½SE¼, SE¼SE¼;
Sec. 36, SW¼NW¼, NW¼SW¼, S½SW¼, SW¼SE¼.

Containing approximately 1,095 acres.

This classification shall be subject to the provisions of section 24 of the Act of June 10, 1920, supra.

2. For the purpose of eliminating overlapping withdrawals, the Departmental Order of May 14, 1929, creating Powersite Classification No. 221 is hereby canceled insofar as it affects that portion of the above area described in the order of withdrawal as follows:

All lands adjacent to Green Lake located on Baranof Island in approximate latitude 56°59' N., and longitude 135°07' W., and the creek which is its outlet into Silver Bay, which lie below an altitude of 350 feet above sea level.

Containing approximately 845 acres.

HARRISON LOESCH,
Assistant Secretary of the Interior.

DECEMBER 2, 1970.

[F.R. Doc. 70-16418; Filed, Dec. 7, 1970; 8:46 a.m.]

Title 46—SHIPPING

Chapter II—Maritime Administration, Department of Commerce

SUBCHAPTER J—MISCELLANEOUS

[General Order 81, 2d Rev.]

PART 350—SEAMEN'S SERVICE AWARDS

Part 350 of this title and chapter is hereby revised to read as follows:

Sec.
350.1 Purpose.
350.2 Korean Service Bar.
350.3 Vietnam Service Bar.
350.4 Procedure for application.
350.5 Purchase.
350.6 Replacements.
350.7 Unauthorized sale.

AUTHORITY: The provisions of this Part 350 issued under sec. 2, 70 Stat. 605; 46 U.S.C. 249a; Department [of Commerce] Organization Order 25-2A (31 F.R. 8087; 35 F.R. 115).

§ 350.1 Purpose.

To set forth the regulations and procedure to be followed, pursuant to Public Law 759, 84th Congress, in connection with the issuance of service ribbon bars to masters, officers and crew members of U.S. ships in recognition of their service in the defense of Korea and Vietnam, and the replacement of awards previously issued for service in the U.S. Merchant Marine during World War II, under earlier Acts of Congress and Executive Orders, now repealed.

§ 350.2 Korean Service Bar.

A red, white, and blue umbra silk ribbon bar, 1⅜-inches wide by ⅜-inch long may be issued to each master, officer, or member of the crew of any U.S. ship who, between June 30, 1950, and September 30, 1953, served in the waters adjacent to Korea, within the following bounds:

From a point at latitude 39°30' N., long. 122°45' E.; southward to lat. 33° N., long. 122°45' E.; thence eastward to lat. 33° N., long. 127°55' E., thence northeastward to lat. 37°05' N., long. 133° E.; thence northward to lat. 40°40' N., long. 133° E.; thence northwestward to a point on the east coast of Korea at the juncture of Korea with the U.S.S.R.

§ 350.3 Vietnam Service Bar.

A red, blue and yellow silk ribbon bar, 1⅜-inches wide by ⅜-inch long may be issued to each master, officer, or member of the crew of any U.S. ship who, between July 4, 1965, to a terminal date to be prescribed later, served in the waters adjacent to Vietnam within the following bounds:

From a point on the East Coast of Vietnam at the juncture of Vietnam with China southeastward to 21° N. lat., 108°15' E. long.; thence southeast to 18° N. lat., 108°15' E. long.; thence southeastward to 17°30' N. lat., 111° E. long.; thence southward to 11° N. lat., 111° E. long.; thence southwestward to 7° N. lat., 105° E. long.; thence westward to 7° N. lat., 103° E. long.; thence northward to 9°30' N. lat., 103° E. long.; thence northeastward to 10°15' N. lat., 104°27' E. long.; thence northward to a point on the West Coast of Vietnam at the juncture with Cambodia.

§ 350.4 Procedure for application.

Application for authorization to wear the Korean Service Bar and Vietnam Service Bar shall be made to the Office of Maritime Manpower, Maritime Administration, Department of Commerce, Washington, D.C. 20235. Such application should include seaman's complete name, Book or "Z" number, the name or names of ships on which he served, dates of service, and his mailing address. If found to be eligible, an Authorization Card will be supplied to the applicant.

§ 350.5 Purchase.

Authorized persons may purchase the Korean Service Bar or Vietnam Service Bar from the only duly certified distributor, Harry Sadow, Inc., 20 Vesey Street, New York, NY 10007, at a cost of 65 cents.

§ 350.6 Replacements.

(a) The following ribbon bars, previously issued for service in the U.S. Merchant Marine, may be replaced if bar is lost, destroyed, or rendered unfit for use, at a cost of 65 cents per ribbon bar upon request to Harry Sadow, Inc., distributor:

Korean Service Bar.
Vietnam Service Bar.
Atlantic War Zone Bar.
Pacific War Zone Bar.
Mediterranean-Middle East War Zone Bar.
Combat Bar.
Defense Bar.
Victory Medal Bar.

(b) The following decorations may be replaced at cost upon application to the Office of Maritime Manpower, Maritime Administration, Department of Commerce, Washington, D.C. 20235:

Distinguished Service Medal.
Meritorious Service Medal.
Mariner's Medal.
Victory Medal.
Merchant Marine Emblem.
Honorable Service Button.

§ 350.7 Unauthorized sale.

The sale of any Merchant Marine decoration by anyone other than a certified distributor, is prohibited by law.

Dated: December 2, 1970.

By order of the Maritime Administrator.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-16414; Filed, Dec. 7, 1970; 8:45 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[FCC 70-1261]

PART 73—RADIO BROADCAST SERVICES

Random Closed Circuit Tests of the Emergency Broadcast System (EBS) Emergency Action Notification System (First and Second Methods) and the Technical Program Origination and Distribution Channels

1. The Commission is in receipt of a letter dated April 10, 1970, from the Military Assistant to the President endorsing and forwarding a proposal of the Commanding Officer, White House Communications Agency (WHCA), concerning random closed circuit tests of the Emergency Broadcast System (EBS) Emergency Action Notification System (First and Second Methods) and the technical program origination and distribution channels, pursuant to § 73.961 (d) and § 73.962 (a) and (b) of the Commission's rules.

2. This request has been carefully considered by Working Group I, Broadcast Services Subcommittee, National Industry Advisory Committee, at the request of the Commission. Personnel from the nationwide commercial Radio and Television Networks (ABC, ABC–TV, CBS, CBS–TV, NBC, NBC–TV, MBS, IMN, and UPI-Audio), the National Association of Broadcasters (NAB), the American Telephone and Telegraph Company (A.T. & T.), the Associated Press (AP), and the United Press International (UPI) participated in the studies and development of recommendations in this matter. Personnel from the Office of the Military Assistant to the President, the White House Communications Agency (WHCA), the Federal Communications Commission (FCC), and other Government agencies served in a liaison and consulting capacity in the study.

3. Concurrence in the recommendations of the National Industry Advisory Committee has been received from the Military Assistant to the President, and from the Commanding Officer, White House Communications Agency.

4. In consideration of the foregoing and pursuant to sections 1 and 303(r) of the Communications Act of 1934, as amended, the Basic Emergency Broadcast System (EBS) Plan and Part 73, Subpart G of the Commission's rules and regulations are amended, effective December 23, 1970, to provide for revised random closed circuit test procedures for the Emergency Action Notification System (First and Second Methods only) and the nationwide technical program origination and distribution facilities, as set forth below. Because the changes herein ordered relate to national security and have already been coordinated with cognizant agencies and parties, compliance with the prior notice and effective date provisions of section 4 of the Administrative Procedure Act (5 USC 553) is unnecessary.

(Secs. 1, 303, 48 Stat., as amended, 1064, 1082; 47 U.S.C. 151, 303)

Adopted: December 2, 1970.

Released: December 4, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

1. The introductory text of § 73.932 is amended to read as follows:

§ 73.932 Emergency action notification procedures.

All broadcast stations are to be furnished complete instructions on color coded cards (yellow, white, red, blue, and green). Each card specifies the procedure to be followed (texts of these cards are included in Annex V of the EBS Plan). Immediately upon receipt of an Emergency Action Notification (yellow card), all standard, commercial FM (including all subcarriers), and non-commercial educational FM (including all subcarriers) broadcast stations with a transmitter output of over 10 watts, and television broadcast stations, including all such stations operating under equipment or program test authority, will proceed as set forth in paragraph (a) or (b) of this section, as applicable:

* * * * *

2. In § 73.961, paragraph (a) is amended and a new paragraph (d) is added to read as follows:

* * * * *

§ 73.961 Tests of the emergency action notification system.

(a) Test transmissions using the First Method of the Emergency Action Notification System utilizing the facilities of the Associated Press (AP) and United Press International (UPI) Radio Wire Teletype Networks will be conducted twice each week. These tests will be conducted on Saturday at 9:30 a.m., Washington, D.C. time, and on Sunday at 8:30 p.m., Washington, D.C. time. The Blue Card, identified as First Method EAN tests, which has been furnished to all standard, FM, and television broadcast stations, sets forth details of these test transmissions.

* * * * *

(d) Notification of closed circuit tests of NIAC Orders 1 through 63 will be activated by using an Emergency Action Notification System closed circuit Test Message (First and Second Methods) for the appropriate NIAC Order using special authentication procedures set forth in EBS–2 and EBS–3 Test Series Lists. These tests will be conducted not more than once a month and not less than once every 3 months at a time selected by both White House Communications Agency (WHCA) and industry representatives. The Green Card, (identified as First Method EAN) and EBS–2 and EBS–3 Test Series Lists, which have been furnished to all concerned, set forth details of these random closed circuit test transmissions.

3. In § 73.962 the section heading, introductory text, and paragraphs (a) and (b) are amended and a new paragraph (c) is added to read as follows; and present paragraphs (c), (d), and (e) are redesignated (d), (e), and (f) respectively.

§ 73.962 Random closed circuit tests of approved interconnecting systems and facilities of the emergency broadcast system (EBS).

Tests of approved interconnecting program systems and facilities voluntarily participating in the Emergency Broadcast System (EBS) will be conducted not more than once a month and not less than once every 3 months at a time selected by both White House Communications Agency (WHCA) and industry representatives as set forth below. Appropriate entries shall be made in the station operating log.

(a) NIAC Order No. 1: National program distribution interconnecting systems and facilities will be tested on a random basis. This test will consist of a closed circuit transmission, and due to varying program scheduling of the commercial Radio Broadcast Networks involved, the individual network facilities shall remain as separate entities. The audio networks associated with the video networks of ABC–TV, CBS–TV, or NBC–TV shall not be utilized nor are the telephone companies authorized to add any of the unaffiliated stations participating in the Emergency Broadcast System (EBS). The American Telephone and Telegraph Co. is authorized to interconnect the facilities of the Intermountain (IMN) Radio Network to any one of the nationwide commercial Radio Broadcast Networks for the duration of these closed circuit tests, then remove such interconnection.

(b) NIAC Order Nos. 2 through 63: Tests of technical program origination and distribution channels will be conducted on a random basis. These tests will originate from a point selected by the White House Communications Agency with program feed circuitry connected to the Telephone Company Toll

Test Center at points indicated for the individual NIAC Orders. These NIAC Orders authorize the American Telephone and Telegraph Co. to feed simultaneously the facilities of the nationwide commercial Radio Broadcast Networks, namely, ABC, CBS, MBS, NBC, and the Intermountain (IMN) Radio Broadcast Network. These facilities may be interconnected as required by the American Telephone and Telegraph Co. The audio networks associated with the video networks of ABC–TV, CBS–TV, or NBC–TV shall not be utilized nor are the telephone companies authorized to add any of the unaffiliated stations participating in the Emergency Broadcast System (EBS). In addition, authentication will be provided by the White House Communications Agency to the Telephone Company Toll Test Center responsible for the particular order to be used.

(c) Interconnection of unaffiliated broadcast stations cannot be provided on tests of NIAC Orders 1 through 63 unless authorized by the Federal Communications Commission.

* * * * *

4. In § 73.981, the headnote and paragraphs (b) and (d) are amended to read as follows, and paragraph (e) is deleted.

§ 73.981 Participation by communications common carriers.

* * * * *

(b) During an Emergency Action Condition and for testing the arrangements for the origination of Presidential Messages and National Programing and News as provided for in NIAC Order Nos. 1 through No. 63, telephone companies which have facilities in place may, without charge connect an originating source associated with an appropriate NIAC Order Number from the nearest Telephone Company Exchange to a selected Toll Test Center thence to the authorized commercial Radio and Television (aural) Broadcast Networks for an Emergency Action Condition and to the authorized commercial Radio Broadcast Networks only for closed circuit tests: *Provided,* That:

(1) The originating source has in service a telephone company local channel from the originating point to the nearest Telephone Company Exchange.

(2) A NIAC Order covering this service is requested by the White House Communications Agency in accordance with the provisions of the Basic Emergency Broadcast System (EBS) Plan.

* * * * *

(d) Random closed circuit tests of technical program origination and distribution channels associated with NIAC Order Nos. 1 through 63 will be conducted as provided in § 73.962. These tests are in conformance with the provision of this section.

* * * * *

[F.R. Doc. 70–16478; Filed, Dec. 7, 1970; 8:50 a.m.]

Title 50—WILDLIFE AND FISHERIES

Chapter I—Bureau of Sport Fisheries and Wildlife, Fish and Wildlife Service, Department of the Interior

PART 33—SPORT FISHING

Kirwin National Wildlife Refuge, Kans.

The following special regulation is issued and is effective on date of publication in the FEDERAL REGISTER.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

KANSAS

KERWIN NATIONAL WILDLIFE REFUGE

Sport fishing on the Kirwin National Wildlife Refuge, Kans., is permitted from January 1, through December 31, 1971, inclusive, on all areas not designated by signs as closed to fishing. These open areas, comprising 5,000 acres, are delineated on maps available at refuge headquarters, 5 miles west of Kirwin, Kans., and from the Regional Director, Bureau of Sport Fisheries and Wildlife, Post Office Box 1306, Albuquerque, NM 87103. Sport fishing shall be in accordance with all applicable State regulations.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1971.

KEITH S. HANSEN,
Refuge Manager, Kirwin National Wildlife Refuge, Kirwin, Kans.

NOVEMBER 20, 1970.

[F.R. Doc. 70–16423; Filed, Dec. 7, 1970; 8:46 a.m.]

Title 7—AGRICULTURE

Subtitle A—Office of the Secretary of Agriculture

[Amdt. No. 4]

PART 20—LIMITATION OF IMPORTS OF MEAT

Subpart—Section 204 Import Regulations

RESTRICTION ON THE IMPORTATION OF MEAT FROM MEXICO

Section 20.3 is amended by adding a new paragraph prohibiting the importation of meat in excess of 71.5 million pounds from Mexico during the calendar year 1970. This regulation is issued with the concurrence of the Secretary of State and the Special Representative for Trade Negotiations to carry out a bilateral agreement negotiated with the Government of Mexico pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854). Since the action taken herewith has been determined to involve foreign affairs functions of the United States, this amendment and the request to the Commissioner of Customs, being necessary to the implementation of such action, fall within the foreign affairs exception to the notice and effective date provision of 5 U.S.C. 553 (Supp. V, 1970).

The subpart, section 204 Import Regulations of Part 20, Subtitle A of Title 7 (35 F.R. 10837, 11613, 16398), is amended by adding to § 20.3 the following new paragraph (e):

§ 20.3 Restrictions.

(e) *Imports from Mexico.* No more than 71.5 million pounds of meat which is the product of Mexico may be entered, or withdrawn from warehouse, for consumption in the United States during the calendar year 1970. Appendix D hereto sets forth a letter to the Commissioner of Customs concurred in by the Secretary of State and Special Representative for Trade Negotiations requesting this limitation be placed in effect.

Effective date: The regulation contained in the amendment shall become effective upon publication in the FEDERAL REGISTER but meat released under the provisions of section 448(b) of the Tariff Act of 1930 (19 U.S.C. 1448(b)) prior to such date shall not be denied entry.

(Sec. 204 of the Agricultural Act of 1956, as amended; 7 U.S.C. 1854, and E.O. 11539)

Issued at Washington, D.C., this 7th day of December 1970.

J. PHIL CAMPBELL,
Acting Secretary of Agriculture.

APPENDIX D

Hon. MYLES J. AMBROSE,
Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20220.

DECEMBER 7, 1970.

DEAR MR. AMBROSE: A bilateral agreement has been negotiated with the Government of Mexico pursuant to Section 204 of the Agricultural Act of 1956, limiting the export from Mexico and the importation into the United States of fresh, chilled, or frozen cattle meat (item 106.10 of the Tariff Schedules of the United States) and fresh, chilled, or frozen meat of goats and sheep, except lambs (item 106.20 of the Tariff Schedules of the United States), during the calendar year 1970. In accordance with the authority delegated by E.O. 11539, dated June 30, 1970, the Secretary of Agriculture is, with the concurrence of the Secretary of State and the Special Representative for Trade Negotiations, issuing a regulation to assist in carrying out this bilateral agreement.

This regulation provides that no more than 71.5 million pounds of meat of the above description, the product of Mexico, may be entered, or withdrawn from warehouse, for consumption in the United States during the

calendar year 1970. This regulation will constitute amendment 4 to the Section 204 Import Regulation (35 F.R. 10837, 11613, 16398). A copy of this regulation, which will be published in the Federal Register, is enclosed.

In accordance with E.O. 11539, you are requested to take such action as is necessary to implement this regulation. This request is made with the concurrence of the Secretary of State and the Special Representative for Trade Negotiations.

Sincerely,

J. PHIL CAMPBELL,
Acting Secretary.

[F.R. Doc. 70-16576; Filed, Dec. 7, 1970; 10:22 a.m.]

Chapter IV—Federal Crop Insurance Corporation, Department of Agriculture

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

APPENDIX; COUNTIES DESIGNATED FOR DRY BEAN CORP. INSURANCE

The appendix designating counties for dry bean crop insurance for the 1971 crop year which was published in the FEDERAL REGISTER on July 16, 1970 (35 F.R. 11366, is hereby amended by adding "pink" to the classes of beans on which insurance is offered in the following counties.

NEBRASKA

Box Butte.	Scotts Bluff.
Morrill.	Sheridan.

(Secs. 506, 516, 32 Stat. 73, as amended, 77, as amended; 7 U.S.C. 1506, 1516)

[SEAL] RICHARD H. ASLAKSON,
Manager, Federal Crop Insurance Corporation.

[F.R. Doc. 70-16446; Filed, Dec. 7, 1970; 8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF THE TREASURY

Bureau of Customs

[19 CFR Part 1]

CUSTOMS FIELD ORGANIZATION

Proposed Reorganization of Customs District of New York City, N.Y.

DECEMBER 1, 1970.

Pursuant to Reorganization Plan No. 1 of 1965 (30 F.R. 7035), Reorganization Plan No. 26 of 1950 (36 CFR, Ch. III), section 1 of the Act of August 1, 1914, as amended, 38 Stat. 623 (19 U.S.C. 2), and Executive Order No. 10289, September 17, 1951 (3 CFR, Ch. II), it is proposed to create in the Customs district of New York City, New York, which is coextensive with Customs Region II, New York City, N.Y., three administrative areas to be designated as Kennedy Airport Area, Newark Area, and New York Seaport Area, each under the jurisdiction of an area director of customs.

Under the proposal the limits of the Kennedy Airport Area would be as follows:

Beginning at a point in the Atlantic Ocean at the foot of Beach 95th Street, Rockaway Beach, and proceeding in a northerly direction along the centerline of Cross Bay Boulevard and its continuation, Woodhaven Boulevard, to Atlantic Avenue; thence in an easterly direction along the centerline of Atlantic Avenue to Van Wyck Expressway; thence in a northerly direction along the centerline of Van Wyck Expressway to Hillside Avenue (Route 24); thence in an easterly direction along the centerline of Hillside Avenue to 212th Street; thence in a southeasterly direction along the centerline of Route 24 (212th Street, Jamaica Avenue, and Hempstead Avenue) to the New York City limits, the boundary line between Queens and Nassau Counties; thence along this boundary line to the Atlantic Ocean, and thence along the shoreline to the point of beginning. In addition, La Guardia Airport and U.S. Naval Air Station New York (Floyd Bennett Field) would be designated as parts of the Kennedy Airport Area.

The Newark Area would consist of the counties of Sussex, Passaic, Hudson, Bergen, Essex, Union, Middlesex, and Monmouth in the State of New Jersey, and the county of Richmond in the State of New York.

The New York Seaport Area would include all that part of the State of New York not expressly included in the Kennedy Airport Area and the Newark Area in the district of New York City and in the districts of Buffalo and Ogdensburg.

The changes to be effected under this proposed plan are specifically designed to cause no disruption in the movement of carriers and cargo in the district of New York City and will in no way diminish the rights of the importing public and other persons who conduct business with that district.

Prior to final action on this proposal, consideration will be given to any relevant data, views, or arguments which are submitted in writing and received not later than 30 days after the date of publication of this notice in the FEDERAL REGISTER. Communications should be addressed to the Commissioner of Customs, Bureau of Customs, Washington, D.C. 20226. No hearing will be held.

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[F.R. Doc. 70-16471; Filed, Dec. 7, 1970; 8:51 a.m.]

Internal Revenue Service

[26 CFR Part 1]

INCOME TAX

Certain Unit Investment Trusts

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any comments or suggestions pertaining thereto which are submitted in writing, preferably in quintuplicate, to the Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224, within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Any person submitting written comments or suggestions who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit his request, in writing, to the Commissioner within the 30-day period. In such case, a public hearing will be held, and notice of the time, place, and date will be published in a subsequent issue of the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to conform the Income Tax Regulations (26 CFR Part 1) to the amendments of the Internal Revenue Code made by section 908 of the Tax Reform Act of 1969 (83 Stat. 717), such regulations are amended as follows:

PARAGRAPH 1. Section 1.851 is amended by adding a subsection (f) to section 851 and by revising the historical note. The revised and added provisions read as follows:

§ 1.851 Statutory provisions; definition of regulated investment company.

Sec. 851. *Definition of regulated investment company.* * * *

(f) *Certain unit investment trusts.* For purposes of this title—

(1) A unit investment trust (as defined in the Investment Company Act of 1940)—

(A) Which is registered under such Act and issues periodic payment plan certificates (as defined in such Act) in one or more series,

(B) Substantially all of the assets of which, as to all such series, consist of (i) securities issued by a single management company (as defined in such Act) and securities acquired pursuant to subparagraph (C), or (ii) securities issued by a single other corporation, and

(C) Which has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission,

shall not be treated as a person.

(2) In the case of a unit investment trust described in paragraph (1)—

(A) Each holder of an interest in such trust shall, to the extent of such interest, be treated as owning a proportionate share of the assets of such trust;

(B) The basis of the assets of such trust which are treated under subparagraph (A) as being owned by a holder of an interest in such trust shall be the same as the basis of his interest in such trust; and

(C) In determining the period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (A) as being owned by him, there shall be included the period for which such holder has held his interest in such trust.

This subsection shall not apply in the case of a unit investment trust which is a segregated asset account under the insurance laws or regulations of a State.

(Sec. 851 as amended by sec. 38, Technical Amendment Act 1958 (72 Stat. 1638); sec. 908, Tax Reform Act 1969 (83 Stat. 717))

PAR. 2. The following new section is inserted immediately after § 1.851-6.

§ 1.851-7 Certain unit investment trusts.

(a) *In general.* For purposes of the Internal Revenue Code, a unit investment trust (as defined in paragraph (d) of this section) shall not be treated as a person (as defined in section 7701 (a)(1)) except for years ending before January 1, 1969. A holder of an interest in such a trust will be treated as directly owning the assets of such trust for taxable years of such holder which end with or within any year of the trust to which section 851(f) and this section apply.

(b) *Treatment of unit investment trust.* A unit investment trust shall not be treated as an individual, a trust,

estate, partnership, association, company, or corporation for purposes of the Internal Revenue Code. Accordingly, a unit investment trust is not a taxpayer subject to taxation under the Internal Revenue Code. No gain or loss will be recognized by the unit investment trust if such trust distributes a holder's proportionate share of the trust assets in exchange for his interest in the trust. Also, no gain or loss will be recognized by the unit investment trust if such trust sells the holder's proportionate share of the trust assets and distributes the proceeds from such share to the holder in exchange for his interest in the trust.

(c) *Treatment of holder of interest in unit investment trust.* (1) Each holder of an interest in a unit investment trust shall be treated (to the extent of such interest) as owning a proportionate share of the assets of the trust. Accordingly, if the trust distributes to the holder of an interest in such trust his proportionate share of the trust assets in exchange for his interest in the trust, no gain or loss shall be recognized by such holder (or by any other holder of an interest in such trust). For purposes of this paragraph, each purchase of an interest in the trust by the holder will be considered a separate interest in the trust. Items of income, gain, loss, deduction, or credit received by the trust or a custodian thereof shall be taxed to the holders of interests in the trust (and not to the trust) as though they had received their proportionate share of the items directly on the date such items were received by the trust or custodian.

(2) The basis of the assets of such trust which are treated under subparagraph (1) of this paragraph as being owned by the holder of an interest in such trust shall be the same as the basis of his interest in such trust. Accordingly, the amount of the gain or loss recognized by the holder upon the sale by the unit investment trust of the holder's pro rata share of the trust assets shall be determined with reference to the basis, of his interest in the trust. Also, the basis of the assets received by the holder, if the trust distributes a holder's pro rata share of the trust assets in exchange for his interest in the trust, will be the same as the basis of his interest in the trust.

(3) The period for which the holder of an interest in such trust has held the assets of the trust which are treated under subparagraph (1) of this paragraph as being owned by him is the same as the period for which such holder has held his interest in such trust. Accordingly, the character of the gain, loss, deduction, or credit recognized by the holder upon the sale by the unit investment trust of the holder's proportionate share of the trust assets shall be determined with reference to the period for which he has held his interest in the trust. Also, the holding period of the assets received by the holder if the trust distributes the holder's proportionate share of the trust assets in exchange for his interest in the trust will include the period for which the holder has held his interest in the trust.

(4) The application of the provisions of this paragraph may be illustrated by the following example:

Example. B entered a periodic payment plan of a unit investment trust (as defined in paragraph (d) of this section) with X Bank as custodian and Z as plan sponsor. Under this plan, upon B's demand, X must either redeem B's interest at a price substantially equal to the fair market value of the number of shares in Y, a management company, which are credited to B's account by X in connection with the unit investment trust, or at B's option distribute such shares of Y to B. B's plan provides for quarterly payments of $1,000. On October 1, 1969, B made his initial quarterly payment of $1,000 and X credited B's account with 110 shares of Y. On December 1, 1969, Y declared and paid a dividend of 25 cents per share, 5 cents of which was designated as a capital gain dividend pursuant to section 852(b) (3) and § 1.852-4. X credited B's account with $27.50 but did not distribute the money to B in 1969. On December 31, 1969, X charged B's account with $1 for custodial fees for calendar year 1969. On January 1, 1970, B paid X $1,000 and X credited B's account with 105 shares of Y. On April 1, 1970, B paid X $1,000 and X credited B's account with 100 shares of Y. B must include in his tax return for 1969 a dividend of $22 and a long-term capital gain of $5.50. In addition, B is entitled to deduct the annual custodial fee of $1 under section 212 of the Code.

(a) On April 4, 1970, at B's request, X sells the shares of Y credited to B's account (315 shares) for $10 per share and distributes the proceeds ($3,150) to B together with the remaining balance of $26.50 in B's account. The receipt of the $26.50 does not result in any tax consequences to B. B recognizes a long-term capital gain of $100 and a short-term capital gain of $50, computed as follows:

(1) B is treated as owning 110 shares of Y as of October 1, 1969. The basis of these shares is $1,000, and they were sold for $1,100 (110 shares at $10 per share). Therefore, B recognizes a gain from the sale or exchange of a capital asset held for more than 6 months in the amount of $100.

(2) B is treated as owning 105 shares of Y as of January 1, 1970, and 100 shares as of April 1, 1970. With respect to the shares acquired on April 1, 1970, there is no gain recognized as the shares were sold for $1,000, which is B's basis of the shares. The shares acquired on January 1, 1970, were sold for $1,050 (105 shares at $10 per share), and B's basis of these shares is $1,000. Therefore, B recognizes a gain of $50 from the sale or exchange of a capital asset held for not more than 6 months.

(b) On April 4, 1970, at B's request, X distributes to B the shares of Y credited to his account and $26.50 in cash. The receipt of the $26.50 does not result in any tax consequences to B. B does not recognize gain or loss on the distribution of the shares of Y to him. The bases and holding periods of B's interests in Y are as follows:

Number of shares	Date acquired	Basis
110	10-1-69	$9.09
105	1-1-70	9.52
100	4-1-70	10.00

(d) *Definition.* A unit investment trust to which this section refers is a business arrangement (other than a segregated asset account, whether or not it holds assets pursuant to a variable annuity contract, under the insurance laws or regulations of a State) which (except for taxable years ending before Jan. 1, 1969)—

(1) Is a unit investment trust (as defined in the Investment Company Act of 1940);

(2) Is registered under such Act;

(3) Issues periodic payment plan certificates (as defined in such Act) in one or more series;

(4) Possesses, as substantially all of its assets, as to all such series, securities issued by—

(i) A single management company (as defined in such Act), and securities acquired pursuant to subparagraph (5) of this paragraph, or

(ii) A single other corporation; and

(5) Has no power to invest in any other securities except securities issued by a single other management company, when permitted by such Act or the rules and regulations of the Securities and Exchange Commission.

(e) *Cross references.* (1) For reporting requirements imposed on custodians of unit investment trusts described in this section, see §§ 1.852-4, 1.852-9, 1.853-3, 1.854-2, and 1.6042-2.

(2) For rules relating to redemptions of certain unit investment trusts not described in this section, see § 1.852-10.

PAR. 3. Paragraph (c) of § 1.852-4 is amended to read as follows:

§ 1.852-4 Method of taxation of shareholders of regulated investment companies.

* * * * *

(c) *Definition of capital gain dividend*—(1) *General rule.* A capital gain dividend, as defined in section 852(b) (3) (C), is any dividend or part thereof which is designated by a regulated investment company as a capital gain dividend in a written notice mailed to its shareholders not later than 45 days (30 days for a taxable year ending before Feb. 26, 1964) after the close of its taxable year. If the aggregate amount so designated with respect to the taxable year (including capital gain dividends paid after the close of the taxable year pursuant to an election under section 855) is greater than the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, the portion of each distribution which shall be a capital gain dividend shall be only that proportion of the amount so designated which such excess of the net long-term capital gain over the net short-term capital loss bears to the aggregate amount so designated. For example, a regulated investment company making its return on the calendar year basis advised its shareholders by written notice mailed December 30, 1955, that of a distribution of $500,000 made December 15, 1955, $200,000 constituted a capital gain dividend, amounting to $2 per share. It was later discovered that an error had been made in determining the excess of the net long-term capital gain over the net short-term capital loss of the taxable year, and that such excess was $100,000 instead of $200,000. In such case each shareholder

would have received a capital gain dividend of $1 per share instead of $2 per share.

(2) *Shareholder of record custodian of certain unit investment trusts.* In any case where a notice is mailed pursuant to subparagraph (1) of this paragraph by a regulated investment company with respect to a taxable year of the regulated investment company ending after December 8, 1970, to a shareholder of record who is a nominee acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (d) of § 1.851–7, the nominee shall furnish each holder of an interest in such trust with a written notice mailed on or before the 55th day following the close of the regulated investment company's taxable year. The notice shall designate the holder's proportionate share of the capital gain dividend shown on the notice received by the nominee pursuant to subparagraph (1) of this paragraph. The notice shall include the name and address of the nominee identified as such. This subparagraph shall not apply if the regulated investment company agrees with the nominee to satisfy the notice requirements of subparagraph (1) of this paragraph with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and, not later than 45 days following the close of the company's taxable year, files with the Internal Revenue Service office where the company's income tax return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period; provided however, if the regulated investment company fails or is unable to satisfy the requirements of this subparagraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this subparagraph within 30 days of such notice.

* * * * *

PAR. 4. Section 1.852–9 is amended by revising subparagraph (1) of paragraph (b) and adding a subparagraph (3) to paragraph (b). The revised and added provisions read as follows:

§ 1.852–9 Special procedural requirements applicable to designation under section 852(b)(3)(D).

* * * * *

(b) *Shareholder of record not actual owner*—(1) *Notice to actual owner.* In any case in which a notice on Form 2439 is mailed pursuant to paragraph (a)(1) of this section by a regulated investment company to a shareholder of record who is a nominee of the actual owner or owners of the shares of stock to which the notice relates, the nominee shall furnish to each such actual owner notice of the owner's proportionate share of the amounts of undistributed capital gains and tax with respect thereto, as shown on the Form 2439 received by the nominee from the regulated investment company. The nominee's notice to the actual owner shall be prepared in triplicate on Form 2439 and shall contain the information prescribed in paragraph (a)(1) of this section, except that the name and address of the nominee, identified as such, shall be entered on the form in addition to, and in the space provided for, the name and address of the regulated investment company, and the amounts of undistributed capital gains and tax with respect thereto entered on the form shall be the actual owner's proportionate share of the corresponding items shown on the nominee's notice from the regulated investment company. Copies B and C of the Form 2439 prepared by the nominee shall be mailed to the actual owner—

(i) For taxable years of regulated investment companies ending after February 25, 1964, on or before the 75th day (55th day in the case of a nominee who is acting as a custodian of a unit investment trust described in section 851(f)(1) and paragraph (d) of § 1.851–7 for taxable years of regulated investment companies ending after December 8, 1970, and 135th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year, or

(ii) For taxable years of regulated investment companies ending before February 26, 1964, on or before the 60th day (120th day if the nominee is a resident of a foreign country) following the close of the regulated investment company's taxable year.

* * * * *

(3) *Custodian of certain unit investment trusts.* The requirements of this paragraph shall not apply to a nominee who is acting as a custodian of the unit investment trust described in section 851(f)(1) and paragraph (d) of § 1.851–7 provided that the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by such nominee as custodian and on or before the 45th day following the close of the company's taxable year, files with the Internal Revenue Service office where the company's income tax return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period; provided however, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

* * * * *

PAR. 5. Paragraph (c) of § 1.852–10 is amended to read as follows:

§ 1.852–10 Distributions in redemption of interests in unit investment trusts.

* * * * *

(c) *Definition of unit investment trust.* A unit investment trust to which paragraph (a) of this section refers is a business arrangement which—

(1) Is registered under the Investment Company Act of 1940 as a unit investment trust;

(2) Issues periodic payment plan certificates (as defined in such Act);

(3) Possesses, as substantially all of its assets, securities issued by a management company (as defined in such Act);

(4) Qualifies as a regulated investment company under section 851; and

(5) Complies with the requirements provided for by section 852(a).

Paragraph (a) of this section does not apply to a unit investment trust described in section 851(f)(1) and paragraph (d) of § 1.851–7.

PAR. 6. Section 1.853–3 is amended to read as follows:

§ 1.853–3 Notice to shareholders.

(a) *General rule.* If a regulated investment company makes an election under section 853(a), in the manner provided in § 1.853–4, the investment company is required, under section 853(c), to furnish its shareholders with a written notice mailed not later than 45 days (30 days for taxable years ending before Feb. 26, 1964) after the close of its taxable year. The notice must designate the shareholder's portion of foreign taxes paid to each such country or possession and the portion of the dividend which represents income derived from sources within each such country or possession. For purposes of section 853(b)(2) and paragraph (b) of § 1.853–2, the amount that a shareholder may treat as his proportionate share of foreign taxes paid and the amount to be included as gross income derived from any foreign country or possession of the United States shall not exceed the amounts so designated by the company in such written notice. If,

however, the amount designated by the company in the notice exceeds the shareholder's proper proportionate share of foreign taxes or gross income from sources within any foreign country or possession, the shareholder is limited to the amount correctly ascertained.

(b) *Shareholder of record custodian of certain unit investment trusts.* In any case where a notice is mailed pursuant to paragraph (a) of this section by a regulated investment company with respect to a taxable year of the regulated investment company ending after December 8, 1970 to a shareholder of record who is a nominee acting as a custodian of a unit investment trust described in section 851 (f) (1) and paragraph (b) of § 1.851–7, the nominee shall furnish each holder of an interest in such trust with a written notice mailed on or before the 55th day following the close of the regulated investment company's taxable year. The notice shall designate the holder's proportionate share of the amounts of foreign taxes paid to each such country or possession and the holder's proportionate share of the dividend which represents income derived from sources within each country or possession shown on the notice received by the nominee pursuant to paragraph (a) of this section. The notice shall include the name and address of the nominee identified as such. This paragraph shall not apply if the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and not later than 45 days following the close of the company's taxable year, files with the Internal Revenue Service office where such company's return for the taxable year is to be filed, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period; provided however, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

PAR. 7. Section 1.854–2 is amended to read as follows:

§ 1.854–2 Notice to shareholders.

(a) *General rule.* Section 854(b) (2) provides that the amount that a shareholder may treat as a dividend for purposes of the exclusion under section 116 for dividends received by individuals, the deduction under section 243 for dividends received by corporations, and, in the case of dividends received by individuals before January 1, 1965, the credit under section 34, shall not exceed the amount so designated by the company in a written notice to its shareholders mailed not later that 45 days (30 days for a taxable year ending before Feb. 26, 1964) after the close of the company's taxable year. If, however, the amount so designated by the company in the notice exceeds the amount which may be treated by the shareholder as a dividend for such purposes, the shareholder is limited to the amount as correctly ascertained under section 854(b) (1) and paragraph (c) of § 1.854–1.

(b) *Shareholder of record custodian of certain unit investment trusts.* In any case where a notice is mailed pursuant to paragraph (a) of this section by a regulated investment company with respect to a taxable year of the regulated investment company ending after December 8, 1970 to a shareholder of record who is a nominee acting as a custodian of a unit investment trust described in section 851(f) (1) and paragraph (d) of § 1.851–7, the nominee shall furnish each holder of an interest in such trust with a written notice mailed on or before the 55th day following the close of the regulated investment company's taxable year. The notice shall designate the holder's proportionate share of the amounts that may be treated as a dividend for purposes of the exclusion under section 116 for dividends received by individuals and the deduction under section 243 for dividends received by corporations shown on the notice received by the nominee pursuant to paragraph (a) of this section. This notice shall include the name and address of the nominee identified as such. This paragraph shall not apply if the regulated investment company agrees with the nominee to satisfy the notice requirements of paragraph (a) of this section with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and not later than 45 days following the close of the company's taxable year, files with the Internal Revenue Service office where such company's return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requidrement under this paragraph shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such 45-day period; provided however, if the regulated investment company fails or is unable to satisfy the requirements of this paragraph with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this paragraph within 30 days of such notice.

PAR. 8. Paragraph (a) of § 1.6042–2 is amended to read as follows:

§ 1.6042–2 Returns of information as to dividends paid in calendar years after 1962.

(a) *Requirement of reporting*—(1) *In general.* * * *

(ii) Every person, except to the extent that he acts as a nominee described in subdivision (iii) of this subparagraph, who during a calendar year after 1962 receives payments of dividends as a nominee on behalf of another person aggregating $10 or more shall make an information return on Forms 1096 and 1087 for such calendar year showing the aggregate amount of such dividends, the name and address of the person on whose behalf received, the total of such dividends received on behalf of all persons, and such other information as is required by the forms. Notwithstanding the preceding sentence, the filing of Form 1087 is not required if—

(*a*) The record owner is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner;

(*b*) The record owner is a nominee of a banking institution or trust company exercising trust powers, and such banking institution or trust company is required to file a fiduciary return on Form 1041 disclosing the name, address, and identifying number of the actual owner; or

(*c*) The record owner is a banking institution or trust company exercising trust powers, or a nominee thereof, and the actual owner is an organization exempt from taxation under section 501(a) for which such banking institution or trust company files an annual return;

but only if the name, address, and identifying number of the record owner are included on or with the Form 1041 fiduciary return filed for the estate or trust or the annual return filed for the tax exempt organization.

(iii) Every person who is a nominee acting as a custodian of a unit investment trust described in section 851(f) (1) and paragraph (d) of § 1.851–7 who, during a calendar year after 1968, receives payments of dividends in such capacity, shall make an information return on Forms 1096 and 1099M, for such calendar year showing the information required by such forms and instructions thereto and the name, address, and identifying number of the nominee identified as such. This subdivision shall not apply if the regulated investment company agrees with the nominee to satisfy the requirements of section 6042 and the regulations thereunder with respect to each holder of an interest in the unit investment trust whose shares are being held by the nominee as custodian and within the

time limit for furnishing statements prescribed by § 1.6042–4, files with the Internal Revenue Service office where such company's return is to be filed for the taxable year, a statement that the holders of the unit investment trust with whom the agreement was made have been directly notified by the regulated investment company. Such statement shall include the name, sponsor, and custodian of each unit investment trust whose holders have been directly notified. The nominee's requirements under this subdivision shall be deemed met if the regulated investment company transmits a copy of such statement to the nominee within such period; provided, however, if the regulated investment company fails or is unable to satisfy the requirements of section 6042 with respect to the holders of interest in the unit investment trust, it shall so notify the Internal Revenue Service within 45 days following the close of its taxable year. The custodian shall, upon notice by the Internal Revenue Service that the regulated investment company has failed to comply with the agreement, satisfy the requirements of this subdivision within 30 days of such notice.

* * * * *

PAR. 9. Section 1.6042–4 is amended by revising subparagraph (1) of paragraph (c). The revised provision reads as follows:

§ 1.6042–4 Statements to recipients of dividend payments.

* * * * *

(c) *Time for furnishing statements*—(1) *In general.* Each statement required by this section to be furnished to any person for a calendar year shall be furnished to such person after November 30 of the year and on or before January 31 (February 10 in the case of a nominee filing under § 1.6042–2(a)(1)(iii)) of the following year, but no statement may be furnished before the final dividend for the calendar year has been paid. However, the statement may be furnished at any time after September 30 if it is furnished with the final dividend for the calendar year.

* * * * *

[F.R. Doc. 70–16425; Filed, Dec. 7, 1970; 8:45 a.m.]

[26 CFR Part 181]

COMMERCE IN EXPLOSIVES

Notice of Proposed Rule Making

Notice is hereby given that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Notice is also given of a public hearing to be held at 10 a.m., e.s.t., on Tuesday, December 29, 1970, in Room 1048, Museum of History and Technology, Smithsonian Institution, Constitution Avenue between 12th and 14th Streets NW., Washington, DC at which time and place all interested parties will be afforded opportunity to be heard, in person or by authorized representative, with reference to the proposed regulations. Written data, views, or arguments relevant to the proposed regulations may be submitted, in duplicate, for incorporation into the record of hearing (1) by mailing the same to the Director, Alcohol, Tobacco and Firearms Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224, provided they are received prior to the termination of the hearing, or (2) by presenting the same at said hearing. Any written comments or suggestions not specifically designated as confidential in accordance with 26 CFR 601.601(b) may be inspected by any person upon written request. Persons who plan to attend the hearing are requested to so notify the Director by December 22, 1970. The proposed regulations are to be issued under the authority contained in 18 U.S.C. 847 (84 Stat. 959).

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

In order to implement the provisions of Title XI, Regulation of Explosives (title 18, United States Code, chapter 40 (84 Stat. 952)) of the Organized Crime Control Act of 1970 (84 Stat. 922), the following regulations are hereby prescribed as Part 181 of Title 26 of the Code of Federal Regulations:

PART 181—COMMERCE IN EXPLOSIVES

Preamble. 1. These regulations shall not affect any act done or any liability or right accruing, or accrued, or any suit or proceeding had or commenced before the effective date of these regulations.

2. These regulations shall be effective on and after February 12, 1971.

Subpart A—Introduction

Subpart B—Definitions

Subpart C—Administrative and Miscellaneous Provisions

Subpart D—Licenses and Permits

Subpart E—License and Permit Proceedings

Subpart F—Conduct of Business or Operations

Subpart G—Records and Reports

Subpart H—Exemptions

Subpart I—Unlawful Acts, Penalties, Seizures, and Forfeitures

AUTHORITY: The provisions of this Part 181 issued under 84 Stat. 952–960, 18 U.S.C. 841–848, unless otherwise noted.

Subpart A—Introduction

§ 181.1 Scope of regulations.

(a) *In general.* The regulations contained in this part relate to commerce in explosives and are promulgated to implement title XI, Regulation of Explosives (18 U.S.C. chapter 40; 84 Stat. 952), of the Organized Crime Control Act of 1970 (84 Stat. 922).

(b) *Procedural and substantive requirements.* This part contains the procedural and substantive requirements relative to:

(1) The interstate or foreign commerce in explosive materials;

(2) The licensing of manufacturers and importers of, and dealers in, explosive materials;

(3) The issuance of user permits;

(4) The conduct of business by licensees and operations by permittees;

(5) The storage of explosive materials;

(6) The records and reports required of licensees and permittees;

(7) Relief from disabilities under this part; and

(8) Exemptions, unlawful acts, penalties, seizures, and forfeitures.

(c) *Persons engaged in business or operations on October 15, 1970.* This part fully applies to persons engaged on October 15, 1970, in business or operations requiring a license or permit under this part who have filed an application for such license or permit prior to February 12, 1971, and who are continuing such business or operations pending final action on such application pursuant to section 1105(c) of the Organized Crime Control Act of 1970 (84 Stat. 960).

§ 181.2 Relation to other provisions of law.

The provisions in this part are in addition to, and are not in lieu of, any other provision of law, or regulations, respecting commerce in explosive materials. For regulations applicable to commerce in firearms and ammunition, see Part 178 of this chapter. For regulations applicable to traffic in machine guns, destructive devices, and certain other firearms, see Part 179 of this chapter. For statutes applicable to the registration and licensing of persons engaged in the business of manufacturing, importing or exporting arms, ammunition, or implements of war, see section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934), and regulations in Part 180 of this chapter and in Parts 121–128 of Title 22, Code of Federal Regulations. For statutes applicable to nonmailable materials, see 18 U.S.C. 1716 and regulations thereunder. For statutes applicable to water quality standards, see 33 U.S.C. 1171(b).

Subpart B—Definitions

§ 181.11 Meaning of terms.

When used in this part and in forms prescribed under this part, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, terms shall have the meanings ascribed in this section. Words in the plural form shall include the singular, and vice versa, and words importing the masculine gender shall include the feminine. The term "includes" and "including" do not exclude other things not enumerated which are in the same general class or are otherwise within the scope thereof.

Act. Chapter 40 of title 18 of the United States Code.

Ammunition. Small arms ammunition or cartridge cases, primers, bullets, or smokeless propellants designed for use in small arms, and shall include percussion caps and 3/32-inch pyrotechnic safety fuses. The term shall not include black powder.

Approved storage facility. A facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under this part.

Assistant Regional Commissioner. An Assistant Regional Commissioner, Alcohol, Tobacco, and Firearms, who is responsible to, and functions under the direction and supervision of, a Regional Commissioner of Internal Revenue.

Blasting agent. Any material or mixture, consisting of fuel and oxidizer, intended for blasting, not otherwise defined as an explosive: *Provided,* That the finished product, as mixed for use or shipment, cannot be detonated by means of a numbered 8 test blasting cap when unconfined.

Business premises. When used with respect to a manufacturer, importer or dealer the property on which explosive materials are or will be manufactured, imported, stored or distributed. Such premises shall include the property where the records of a manufacturer, importer or dealer are or will be maintained if different than the premises where explosive materials are or will be manufactured, imported, stored or distributed. When used with respect to a user of explosive materials, the property on which the explosive materials are or will be received or stored. Such premises shall include the property where the records of such user are or will be maintained if different than the premises where explosive materials are or will be received or stored.

Commissioner. The Commissioner of Internal Revenue.

Crime punishable by imprisonment for a term exceeding 1 year. Any offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of 1 year. The term shall not include (a) any Federal or State offenses pertaining to antitrust violations, unfair trade practices or restraints of trade, or (b) any State offense (other than one involving a firearm or explosive) classified by the laws of the State as a misdemeanor and punishable by a term of imprisonment of 2 years or less.

Customs officer. Any officer of the Bureau of Customs or any agent or other person authorized by law or by the Secretary of the Treasury, or appointed in writing by a Regional Commissioner of Customs, or by another principal customs officer under delegated authority, to perform the duties of an officer of the Bureau of Customs.

Dealer. Any person engaged in the business of distributing explosive materials at wholesale or retail.

Detonator. Any device containing a detonating charge that is used for initiating detonation in an explosive; the term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses and detonating-cord delay connectors.

Director. The Director, Alcohol, Tobacco, and Firearms Division, Internal Revenue Service, Treasury Department, Washington, D.C. 20224.

Distribute. To sell, issue, give, transfer, or otherwise dispose of.

District Director. A District Director of Internal Revenue.

Executed under penalties of perjury. Signed with the prescribed declaration under the penalties of perjury as provided on or with respect to the return, form, or other document or, where no form of declaration is prescribed, with the declaration: "I declare under the penalties of perjury that this—(insert type of document, such as, statement, application, request, certificate), including the documents submitted in support thereof, has been examined by me and, to the best of my knowledge and belief, is true, correct, and complete."

Explosive materials. Explosives, blasting agents, and detonators. Such materials shall include all items in the Explosives List provided for in § 181.23.

Fugitive from justice. Any person who has fled from the jurisdiction of any court of record to avoid prosecution for any crime or to avoid giving testimony in any criminal proceeding. The term shall also include any person who has been convicted of any crime and has fled to avoid imprisonment.

Importer. Any person engaged in the business or importing or bringing explosive materials into the United States for purposes of sale or distribution.

Indictment. Includes an indictment or information in any court under which a crime punishable by imprisonment for a term exceeding 1 year may be prosecuted.

Internal revenue district. An internal revenue district under the jurisdiction of a District Director of Internal Revenue.

Internal revenue region. An internal revenue region under the jurisdiction of a Regional Commissioner of Internal Revenue.

Interstate or foreign commerce. Commerce between any place in a State and any place outside of that State, or within any possession of the United States (not including the Canal Zone) or the District of Columbia, and commerce between places within the same State but through any place outside of that State.

Licensed dealer. A dealer licensed under the provisions of this part.

Licensed importer. An importer licensed under the provisions of this part.

Licensed manufacturer. A manufacturer licensed under the provisions of this part to engage in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Licensed manufacturer-limited. A manufacturer licensed under the provisions of this part to manufacture explosive materials for his own use and not for sale or distribution.

Licensee. Any importer, manufacturer, or dealer licensed under the provisions of this part.

Manufacturer. Any person engaged in the business of manufacturing explosive materials for purposes of sale or distribution or for his own use.

Manufacturer-limited. Any person manufacturing explosive materials for his own use and not for sale or distribution.

Permittee. Any user of explosives for lawful purpose, who has obtained a user permit under the provisions of this part.

Person. Any individual, corporation, company, association, firm, partnership, society, or joint stock company.

Regional Commissioner. A Regional Commissioner of Internal Revenue.

Service Center Director. A director of an internal revenue service center.

State. A State of the United States. The term shall include the District of Columbia, the Commonwealth of Puerto Rico, and the possessions of the United States (not including the Canal Zone).

State of residence. The State in which an individual regularly resides or maintains his home. Temporary sojourn in a State does not make the State of temporary sojourn the State of residence.

U.S.C. The United States Code.

Subpart C—Administrative and Miscellaneous Provisions

§ 181.21 Forms prescribed.

The Director is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished, as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

§ 181.22 Emergency variations from requirements.

(a) The Director may approve variations from the requirements of this part when he finds that an emergency exists and that the proposed variations from the specific requirements (1) are necessary, (2) will not hinder the effective administration of this part, and (3) will not be contrary to any provisions of law.

(b) Variations from requirements granted under this section are conditioned on compliance with the procedures, conditions, and limitations with respect thereto set forth in the approval of the application. Failure to comply in good faith with such procedures, conditions, and limitations shall automatically terminate the authority for such variations, and the licensee or permittee thereupon shall fully comply with the prescribed requirements of regulations from which the variations were authorized. Authority for any variation may be withdrawn whenever in the judgment of the Director the emergency no longer exists or the effective administration of this part is hindered by the continuation of such variation. A licensee or permittee who desires to employ such variation shall submit a written application so to do, in triplicate, to the Assistant Regional Commissioner for transmittal to the Director. The application shall describe the proposed variation and set forth the reasons therefor. A variation shall not be employed until the application has been approved. The licensee or permittee shall retain, as part of his records, available for examination by internal revenue officers, any application approved by the Director under the provisions of this section.

§ 181.23 Explosives list.

The Director shall compile and publish in the FEDERAL REGISTER an Explosives List. This list shall be published and revised at least annually.

§ 181.24 Right of entry and examination.

Any internal revenue officer may enter during business hours the premises, including places of storage, of any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee for the purpose of inspecting or examining any records or documents required to be kept by such importer, manufacturer, dealer, or permittee under this part, and any explosive materials kept or stored by such importer, manufacturer, dealer, or permittee at such premises.

§ 181.25 Disclosure of information.

Upon receipt of written request of any State or any political subdivision thereof, the Assistant Regional Commissioner may make available to such State or any political subdivision thereof, any information which the Assistant Regional Commissioner may obtain by reason of the provisions of the Act with respect to the identification of persons within such State or political subdivision thereof, who have purchased or received explosive materials, together with a description of such explosive materials.

§ 181.26 Prohibited shipment, transportation, or receipt of explosive materials.

(a) No person, other than a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee, shall transport, ship, cause to be transported, or receive in interstate or foreign commerce any explosive materials: *Provided*, That the provisions of this paragraph shall not apply to the transportation, shipment, or receipt of explosive materials by a nonlicensed person or nonpermittee who lawfully purchases explosive materials from a licensee in a State contiguous to the purchaser's State of residence if, (1) the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State, (2) the provisions of § 181.105(c) are fully complied with, and (3) the purchaser is not otherwise prohibited under paragraph (b) from shipping or transporting explosive materials in interstate or foreign commerce or receiving explosive materials which have been shipped or transported in interstate or foreign commerce.

(b) No person may ship or transport any explosive material in interstate or foreign commerce or receive any explosive materials which have been shipped or transported in interstate or foreign commerce who (1) is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of or addicted to marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug (as defined in section 201(v) of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. 321(v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

§ 181.27 Out-of-State disposition of explosive materials.

No nonlicensee or nonpermittee shall distribute any explosive material to any other nonlicensee or nonpermittee who the distributor knows or has reasonable cause to believe does not reside in the State in which the distributor resides.

§ 181.28 Stolen explosive materials.

No person shall receive, conceal, transport, ship, store, barter, sell, or dispose of any stolen explosive materials knowing or having reasonable cause to believe that the explosive materials were stolen.

§ 181.29 Unlawful storage.

No person shall store any explosive materials in a manner not in conformity with the provisions of Subpart J.

§ 181.30 Reporting theft or loss of explosive materials.

Any licensee or permittee who has knowledge of the theft or loss of any explosive materials from his stock shall within 24 hours of discovery thereof report such theft or loss on Form 4712 to the Assistant Regional Commissioner in accordance with the instructions on such form, and to appropriate local authorities. Any other person who has knowledge of the theft or loss of any explosive materials from his stock shall within 24 hours of discovery thereof report such theft or loss in writing to the Assistant Regional Commissioner, and to appropriate local authorities.

§ 181.31 Inspection of site of accidents or fires; right of entry.

Any internal revenue officer may inspect the site of any accident or fire in which there is reason to believe that explosive materials were involved. Any internal revenue officer may enter into or upon any property where explosive materials have been used, are suspected of having been used, or have been found in an otherwise unauthorized location.

Subpart D—Licenses and Permits

§ 181.41 General.

(a) Each person intending to engage in business as an importer or manufacturer of, or a dealer in, explosive materials shall, before commencing such business, obtain the license required by this subpart for the business to be operated. Each person who intends to acquire for use explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall obtain a permit under the provisions of this subpart: *Provided,* That it is not necessary to obtain such permit if the user intends to lawfully purchase explosive materials from a licensee in a State contiguous to the user's State of residence and the user's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State.

(b) Each person intending to engage in business as an explosive materials importer, manufacturer, or dealer shall file an application, with the required fee (see § 181.42), with the Service Center Director for the internal revenue district in which his business premises are to be located. A separate license must be obtained for each business premises at which the applicant is to manufacture, import, or distribute explosive materials: *Provided,* That a separate license shall not be required for storage facilities operated by the licensee as an integral part of one business premises or to cover a location used by the licensee solely for maintaining the records required by this part: *Provided further,* That a separate license shall not be required of a licensed manufacturer with respect to his on site manufacturing. A license shall, subject to the provisions of law, entitle the licensee to transport, ship, and receive explosive materials in interstate or foreign commerce, and to engage in the business specified by the license, at the location described on the license (and in the case of a licensed manufacturer, on site within the same internal revenue region), for the period stated on the license: *Provided,* That it shall not be necessary for a licensed importer or a licensed manufacturer (for purposes of sale or distribution) to also obtain a dealer's license in order to engage in business on his licensed premises as a dealer in explosive materials.

(c) Except as provided in paragraph (a) of this section, each person intending to acquire explosive materials from a licensee in a State other than a State in which he resides, or from a foreign country, or who intends to transport explosive materials in interstate or foreign commerce, shall file an application, with the required fee (see § 181.43), with the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business. A separate permit shall not be required to cover multiple job sites. A permit shall, subject to the provisions of the Act and other applicable provisions of law, entitle the permittee to transport, ship, and receive in interstate or foreign commerce explosive materials of the class authorized by his permit. (See Subpart J.)

§ 181.42 License fees.

(a) Each applicant shall pay a fee for obtaining a license, a separate fee being required for each business premises, as follows:

(1) Manufacturer—$50.
(2) Manufacturer-limited (nonrenewable)—$5.
(3) Importer—$50.
(4) Dealer—$20.

(b) Each applicant for a renewal of a license shall pay a fee equal to one-half of the fee prescribed under paragraph (a).

§ 181.43 Permit fees.

(a) Each applicant shall pay a fee for obtaining a permit as follows:

(1) User—$20.
(2) User-limited (nonrenewable)—$2.

(b) Each applicant for a renewal of a user permit shall pay a fee of $10.

§ 181.44 License or permit fee not refundable.

No refund of any part of the amount paid as a license or permit fee shall be made where the operations of the licensee or permittee are, for any reason, discontinued during the period of an issued license or permit. However, the license or permit fee submitted with an application for a license or permit shall be refunded if that application is denied.

§ 181.45 Original license or permit.

(a) Any person who intends to engage in business as an explosive materials importer, manufacturer, or dealer on or after February 12, 1971, or who has not timely submitted application for renewal of a previous license issued under this part, shall file with the Service Center Director for the internal revenue district in which the applicant is to do business an application, Form 4705, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4705 may be obtained from any Assistant Regional Commissioner or from any District Director.

(b) Any person, except as provided in § 181.41(a), who intends to acquire on or after February 12, 1971, explosive materials from a licensee in a State other than the State in which he resides, or from a foreign country or who intends to transport explosive materials in interstate or foreign commerce, or who has not timely submitted application for renewal of a previous permit issued under this part, shall file with the Service Center Director for the internal revenue district in which is located his legal residence or principal place of business an application, Form 4707, in duplicate. The application must be executed under the penalties of perjury and the penalties imposed by 18 U.S.C. 844(a). The application shall be accompanied by the appropriate fee in the form of (1) cash, or (2) money order or check made payable to the Internal Revenue Service. Forms 4707 may be obtained from any Assistant Regional Commissioner or from any District Director.

(c) Any person engaging in a business or operation requiring a license or permit under the provisions of this part who was engaged in such business or operation on October 15, 1970, and who has filed an application for a license or permit prior to February 12, 1971, may continue such business or operation pending final action on the application (see § 181.1(c)).

§ 181.46 Renewal of license or permit.

If a licensee or permittee intends to continue the business or operation described on a license or permit issued under this part after the expiration date of the license or permit, he shall, unless otherwise notified in writing by the Assistant Regional Commissioner, execute and file prior to the expiration of his license or permit an application for license renewal, Form 4706 (Part III), or an application for permit renewal, Form 4708 (Part III), accompanied by the required fee, with the Service Center Director for the internal revenue district in which the business premises are located, or in the case of a permittee, in which is located his legal residence or principal place of business: *Provided,* That a license issued to a manufacturer-limited is not renewable and is only valid for 30 days from date of issuance, and a user-limited permit is not renewable and is only valid for a single transaction.

All applications for manufacturer-limited licenses or user-limited permits must be filed on Form 4705 or Form 4707 in the manner required by § 181.45. In the event the licensee or permittee does not timely file a renewal application, he must file an original application as required by § 181.45, and obtain the required license or permit in order to continue business or operations. If a licensee or permittee does not timely receive renewal application forms through the mails, he should so notify his Assistant Regional Commissioner.

§ 181.47 Procedure by Service Center Director.

Upon receipt of an application for an original license or an original permit or an application for renewal of a license or renewal of a permit, the Service Center Director shall deposit the fee accompanying the license or permit application and forward the application to the Assistant Regional Commissioner. Where an application is filed with an insufficient fee, the application and any fee submitted shall be returned.

§ 181.48 Abandoned application.

Upon receipt of an incomplete or improperly executed application, the applicant shall be notified of the deficiency in the application. If the application is not corrected and returned within 30 days following the date of notification, the application shall be considered as having been abandoned and the license or permit fee returned.

§ 181.49 Issuance of license or permit.

(a) Upon receipt of a properly executed application for a license or permit, the Assistant Regional Commissioner shall, upon finding through further inquiry or investigation, or otherwise, that the applicant is entitled thereto, issue the appropriate license or permit and a copy thereof: *Provided,* That in the case of a user-limited permit, the original only shall be issued. Each license or permit shall bear a serial number and such number may be assigned to the licensee or permittee to whom issued for as long as he maintains continuity of renewal in the same internal revenue region.

(b) The Assistant Regional Commissioner shall approve a properly executed application for license or permit, if:

(1) The applicant is 21 years of age or over;

(2) The applicant (including, in the case of a corporation, partnership, or association, any individual possessing, directly or indirectly, the power to direct or cause the direction of the management and policies of the corporation, partnership, or association) is not a person to whom distribution of explosive materials is prohibited under the provisions of the Act;

(3) The applicant has not willfully violated any of the provisions of the Act or this part;

(4) The applicant has not knowingly withheld information or has not made any false or fictitious statement intended or likely to deceive, in connection with his application;

(5) The applicant has in a State business premises from which he conducts business or operations subject to license or permit under the Act or from which he intends to conduct such business or operations;

(6) The applicant has storage facilities for the class of explosive materials described on the application which facilities meet the standards prescribed by Subpart J of this part, unless he establishes to the satisfaction of the Assistant Regional Commissioner that the business or operations to be conducted will not require the storage of explosive materials;

(7) The applicant has certified in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business; and

(8) The applicant for a license has submitted the certificate required by section 21 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1171 (b)).

(c) The Assistant Regional Commissioner shall approve or deny an application for license or permit within the 45-day period beginning on the date a properly executed application was received by the Service Center Director: *Provided,* That when an applicant for license or permit renewal is a person who is, pursuant to the provisions of § 181.83 or § 181.142, conducting business or operations under a previously issued license or permit, action regarding the application will be held in abeyance pending the completion of the proceedings against the applicant's existing license or permit, or renewal application, or final action by the Commissioner on an application for relief submitted pursuant to § 181.142, as the case may be.

§ 181.50 Correction of error on license or permit.

(a) Upon receipt of a license or permit issued under the provisions of this part, each licensee or permittee shall examine same to insure that the information contained thereon is accurate. If the license or permit is incorrect, the licensee or permittee shall return the license or permit to the Assistant Regional Commissioner with a statement showing the nature of the error. The Assistant Regional Commissioner shall correct the error, if the error was made in his office, and return the license or permit. However, if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Assistant Regional Commissioner shall require the licensee or permittee to file an amended application setting forth the correct information and a statement explaining the error contained in the application. Upon receipt of the amended application and a satisfactory explanation of the error, the Assistant Regional Commissioner shall make the correction on the license or permit and return the same to the licensee or permittee.

(b) When the Assistant Regional Commissioner finds through any means other than notice from the licensee or permittee that an incorrect license or permit has been issued, (1) the Assistant Regional Commissioner may require the holder of the incorrect license or permit to return the license or permit for correction, and (2) if the error resulted from information contained in the licensee's or permittee's application for the license or permit, the Assistant Regional Commissioner shall require the licensee or permittee to file an amended application setting forth the correct information, and a statement satisfactorily explaining the error contained in the application. The Assistant Regional Commissioner then shall make the correction on the license or permit and return same to the licensee or permittee.

§ 181.51 Duration of license or permit.

Licenses and permits shall be issued for a period of 1 year: *Provided,* That a manufacturer-limited license shall be issued for a period of 30 days and a user-limited permit shall be valid only for a single transaction.

§ 181.52 Locations covered by license or permit.

(a) The license covers the business and class of explosive materials specified in the license at the licensee's business premises (see § 181.41(v)).

(b) The permit covers the operations and class of explosive materials specified in the permit.

§ 181.53 License and permit not transferable.

Licenses and permits issued under this part are not transferable to another person. In the event of the lease, sale, or other transfer of the business or operations covered by the license or permit, the successor must obtain the license or permit required by this part prior to commencing such business or operations. However, for rules on right of succession, see § 181.59.

§ 181.54 Change of location; change in construction.

(a) *Other than storage facilities.* Except as provided in paragraph (b), a licensee or permittee may during the term of his license or permit remove his business or operations to a new location at which he intends regularly to carry on such business or operations, without procuring a new license or permit. However, in every case, whether or not the removal is from one internal revenue region to another, notification of the new location of the business or operations must be given not less than 10 days prior to such removal to the Assistant Regional Commissioner for the internal revenue region from which or within which the removal is to be made, and the Assistant Regional Commissioner for the internal revenue region to which the removal is to be made. In each instance, the license or permit and any copies thereof furnished with the license or permit must be submitted for endorsement to the Assistant Regional Commissioner having jurisdiction over the internal revenue region to which or within which removal is to be made. After endorsement of the license or permit and the copies thereof

to show the new location, and the new license or permit number, if any, the Assistant Regional Commissioner will return same to the licensee or permittee.

(b) *Storage facilities.* A licensee or permittee who intends to change the location of his approved storage facility described in his application (other than a change of location of a portable approved storage facility) during the term of his license or permit shall make written application, in duplicate, to the Assistant Regional Commissioner who issued the license or permit, describing the location, the type of construction, and the class of explosive materials as prescribed in Subpart J. Storage of explosive materials may not be commenced at the new location prior to receipt of the copy of such application stamped "Approved".

(c) *Additions to or changes in storage facilities.* A licensee or permittee who intends to make additions to or changes in construction of approved storage facilities described in his application, shall file an application on Form 4705 or on Form 4707 with the Assistant Regional Commissioner for an amended license or permit, describing the proposed additions or changes. Additions to or changes in construction of approved storage facilities may not be made prior to issuance of the amended license or permit. Upon receipt of the amended license or amended permit, the licensee or permittee shall submit his superseded license or superseded permit and any copies thereof to the Assistant Regional Commissioner.

§ 181.55 Change in class of explosive materials.

A licensee or permittee who intends to change the class of explosive materials described in his license or permit from a lower to a higher classification (see Subpart J) shall file an application on Form 4705 or on Form 4707 with the Assistant Regional Commissioner for an amended license or permit. If the change in class of explosive materials would require a change in storage facilities, the amended application shall include a description of the type of construction as prescribed in Subpart J. Business or operations with respect to the new class of explosive materials may not be commenced prior to issuance of the amended license or amended permit. Upon receipt of the amended license or amended permit, the licensee or permittee shall submit his superseded license or superseded permit and any copies thereof to the Assistant Regional Commissioner.

§ 181.56 Change in trade name.

A licensee or permittee continuing to conduct business or operations at the location shown on his license or permit is not required to obtain a new license or permit by reason of a mere change in trade name under which he conducts his business or operations: *Provided,* That such licensee or permittee furnishes his license or permit and any copies thereof for endorsement of such change to the Assistant Regional Commissioner for the internal revenue region in which the licensee or permittee conducts his business or operations, within 30 days from the date the licensee or permittee begins his business or operations under the new trade name.

§ 181.57 Change of control.

In the case of a corporation or association holding a license or permit under this part, if actual or legal control of the corporation or association changes, directly or indirectly, whether by reason of change in stock ownership or control (in the corporation holding a license or permit or in any other corporation), by operation of law, or in any other manner, the licensee or permittee shall, within 30 days of such change, give written notification thereof executed under the penalties of perjury, to the Assistant Regional Commissioner. Upon expiration of the license or permit, the corporation or association must file a Form 4705 or a Form 4707 as required by § 181.45 and pay the fee prescribed in § 181.42(b) or § 181.43 (b).

§ 181.58 Continuing partnerships.

Where, under the laws of the particular State, the partnership is not terminated on death or insolvency of a partner, but continues until the winding up of the partnership affairs is completed, and the surviving partner has the exclusive right to the control and possession of the partnership assets for the purpose of liquidation and settlement, such surviving partner may continue to conduct the business or operations under the license or permit of the partnership. If such surviving partner acquires the business or operations on completion of settlement of the partnership, he shall obtain a license or permit in his own name from the date of acquisition, as provided in § 181.45. The rule set forth in this section shall also apply where there is more than one surviving partner.

§ 181.59 Right of succession by certain persons.

(a) Certain persons other than the licensee or permittee may secure the right to carry on the same explosive materials business or operations at the same business premises for the remainder of the term of license or permit. Such persons are:

(1) The surviving spouse or child, or executor, administrator, or other legal representative of a deceased licensee or permittee; and

(2) A receiver or trustee in bankruptcy, or an assignee for benefit of creditors.

(b) In order to secure the right provided by this section, the person or persons continuing the business or operations shall furnish the license or permit and copies thereof for that business or operations for endorsement of such succession to the Assistant Regional Commissioner for the internal revenue region in which the business or operations is conducted within 30 days from the date on which the successor begins to carry on the business or operations.

§ 181.60 Certain continuances of business or operations.

A licensee or permittee who furnishes his license or permit to the Assistant Regional Commissioner for correction, amendment or endorsement in compliance with the provisions contained in this subpart may continue his business or operations while awaiting its return.

§ 181.61 Discontinuance of business or operations.

Where an explosive materials business or operations is either discontinued or succeeded by a new owner, the owner of the business or operations discontinued or succeeded shall within 30 days thereof furnish to the Assistant Regional Commissioner for the internal revenue region in which his business or operations was located notification of the discontinuance or succession and his license or permit and any copies thereof. (See also § 181.128.)

§ 181.62 State or other law.

A license or permit issued under this part confers no right or privilege to conduct business or operations, including storage, contrary to State or other law. The holder of such a license or permit is not by reason of the rights and privileges granted by that license or permit immune from punishment for conducting an explosive materials business or operations in violation of the provisions of any State or other law. Similarly, compliance with the provisions of any State or other law affords no immunity under Federal law or regulations.

Subpart E—License and Permit Proceedings

§ 181.71 Opportunity for compliance.

Except in proceedings in which the public interest requires otherwise, and the Assistant Regional Commissioner so alleges in the notice of denial of an application or revocation of a license or permit, no license or permit shall be revoked or renewal application denied without first calling to the attention of the licensee or permittee the reasons for the contemplated action and affording him an opportunity to demonstrate or achieve compliance with all lawful requirements and to submit facts, arguments, or proposals or adjustment. The notice of contemplated action, Form 4715, shall afford the licensee or permittee 15 days from the date of receipt of the notice to respond. If no response is received within the 15 days, or after consideration of relevant matters presented by the licensee or permittee, the Assistant Regional Commissioner finds that the licensee or permittee is not likely to abide by the law and regulations, he will proceed as provided in § 181.74.

§ 181.72 Denial of initial application.

Whenever the Assistant Regional Commissioner has reason to believe that an applicant for an original license or permit is not eligible to receive a license or permit under the provisions of

§ 181.49, he shall issue a notice of denial on Form 4716. The notice shall set forth the matters of fact and law relied upon in determining that the application should be denied, and shall afford the applicant 15 days from the date of receipt of the notice in which to request a hearing to review the denial. If no request for a hearing is filed within that time, a copy of the application, marked "Disapproved", will be returned to the applicant.

§ 181.73 Hearing after initial application is denied.

If the applicant for an original license or permit desires a hearing, he shall file a request therefor, in duplicate, with the Assistant Regional Commissioner, within 15 days after receipt of the notice of denial. The request should include a statement of the reasons therefor. On receipt of the request, the Assistant Regional Commissioner shall refer the matter to a hearing examiner and the examiner shall set a time and place (see § 181.77) for a hearing and shall serve notice thereof upon the applicant and the Assistant Regional Commissioner at least 10 days in advance of the hearing date. The hearing shall be conducted in accordance with the hearing procedures prescribed in Part 200 of this chapter (see § 181.82). Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the examiner shall render his recommended decision. He shall certify to the complete record of the proceedings before him and shall immediately forward the complete certified record, together with four copies of his recommended decision, to the Assistant Regional Commissioner for decision.

§ 181.74 Denial of renewal application or revocation of license or permit.

If, following or without opportunity for compliance under § 181.71, as circumstances warrant, the Assistant Regional Commissioner finds that the licensee or permittee is not likely to comply with the law or regulations or is otherwise not eligible to continue operations authorized under his license or permit, the Assistant Regional Commissioner will issue a notice of denial of the renewal application or revocation of the license or permit, Form 4716 or 4717, as appropriate. In either case, the notice shall set forth the matters of fact constituting the violations specified, dates, places, and the sections of law and regulations violated. The notice shall, in the case of revocation of a license or permit, specify the date on which such action is effective, which date shall be on or after the date the notice is served on the licensee or permittee. The notice shall also advise the licensee or permittee that he may, within 15 days after receipt of the notice, request a hearing and, if applicable, a stay of the effective date of the revocation of his license or permit.

§ 181.75 Hearing after denial of renewal application or revocation of license or permit.

If a licensee or permittee whose renewal application has been denied or whose license or permit has been revoked desires a hearing, he shall file a request therefor, in duplicate, with the Assistant Regional Commissioner. In the case of the revocation of a license or permit, he may include a request for a stay of the effective date of the revocation. On receipt of the request the Assistant Regional Commissioner shall advise the licensee or permittee whether the stay of the effective date of the revocation is granted. If the stay of the effective date of the revocation is granted, the Assistant Regional Commissioner shall refer the matter to a hearing examiner. The hearing examiner shall set a time and place (see § 181.77) for a hearing and shall serve notice thereof upon the licensee or permittee and the Assistant Regional Commissioner at least 10 days in advance of the hearing date. If the stay of the effective date of the revocation is denied, the licensee or permittee may request an immediate hearing. In such event, the Assistant Regional Commissioner shall immediately refer the matter to a hearing examiner who shall set a date and place for a hearing, which date shall be no later than 10 days from the date the licensee or permittee requested an immediate hearing. The hearing shall be held in accordance with the applicable provisions of Part 200 of this chapter. Within a reasonable time after the conclusion of the hearing, and as expeditiously as possible, the hearing examiner shall render his decision. He shall certify to the complete record of the proceeding before him and shall immediately forward the complete certified record, together with two copies of his decision, to the Assistant Regional Commissioner, serve one copy of his decision on the licensee or permittee or his counsel, and transmit a copy to the attorney for the Government.

§ 181.76 Action by Assistant Regional Commissioner.

(a) *Initial application proceedings.* If, upon receipt of the record and the recommended decision of the examiner, the Assistant Regional Commissioner decides that the license or permit should be issued, he shall approve the application, briefly stating, for the record, his reasons therefor. If he contemplates that the denial should stand, he shall serve a copy of the examiner's recommended decision on the applicant, informing the applicant of his contemplated action and affording the applicant not more than 10 days in which to submit proposed findings and conclusions or exceptions to the recommended decision with reasons in support thereof. If the Assistant Regional Commissioner, after consideration of the record of the hearing and of any proposed findings, conclusions, or exceptions filed with him by the applicant, approves the findings, conclusions and recommended decision of the examiner, he shall issue the license or permit or disapprove the application in accordance therewith. If he disapproves of the findings, conclusions, and recommendation of the examiner, in whole or in part, he shall by order make such findings and conclusions as in his opinion are warranted by the law and the facts in the record. Any decision of the Assistant Regional Commissioner ordering the disapproval of an initial application for a license or permit shall state the findings and conclusions upon which it is based, including his ruling upon each proposed finding, conclusion, and exception to the examiner's recommended decision, together with a statement of his findings and conclusions, and reasons or basis therefor, upon all material issues of fact, law or discretion presented on the record. A signed duplicate original of the decision shall be served upon the applicant and the original copy containing certificate of service shall be placed in the official record of the proceedings. If the decision of the Assistant Regional Commissioner is in favor of the applicant, he will issue the license or permit, to be effective on issuance.

(b) *Renewal application and revocation proceedings.* Upon receipt of the complete certified records of the hearing, the Assistant Regional Commissioner shall enter an order confirming the revocation of the license or permit, or disapproving the application, in accordance with the examiner's findings and decision, unless he disagrees with the findings and decision. A signed duplicate original of the order, Form 4718, shall be served upon the licensee or permittee and the original copy containing certificate of service shall be placed in the official record of the proceedings. If the Assistant Regional Commissioner disagrees with the findings and decision of the examiner, he shall file a petition with the Director for review thereof as provided in § 181.79. In either case, if the renewal application denial is sustained a copy of the application marked "Disapproved" will be returned to the applicant. If the renewal application denial is reversed a license or permit will be issued to become effective on expiration of the license or permit being renewed, or on the date of issuance, whichever is later. If the proceedings involve the revocation of a license or permit which expired before a decision is in favor of the licensee or permittee, the Assistant Regional Commissioner shall:

(1) If renewal application was timely filed and a stay of the effective date of the revocation was granted, issue a license or permit effective on the date of issuance;

(2) If renewal application was not timely filed but a stay of the effective date of the revocation had been granted, request that a renewal application be filed and, pursuant thereto, issue a license or permit to be effective on issuance; or

(3) If a stay of the effective date of the revocation had not been granted, request that an application be filed as provided in § 181.45, and process it in the same manner as for an application for an original license or permit.

(c) *Curtailment of stay of revocation effective date.* If, after approval of a request for a stay of the effective date of an order revoking a license or permit but before actions are completed under this subpart, the Assistant Regional

Commissioner finds that it is contrary to the public interest for the licensee or permittee to continue the operations or activities covered by his license or permit, the Assistant Regional Commissioner may issue a notice of withdrawal of such approval, effective on the date of issuance. Such notice shall be served upon the licensee or permittee in the manner provided in § 181.81.

§ 181.77 Designated place of hearing.

The designated place of hearing set as provided in § 181.73 or § 181.75 shall be at the location convenient to the aggrieved party.

§ 181.78 Representation at a hearing.

An applicant, licensee, or permittee may be represented by an attorney or other person recognized to practice before the Internal Revenue Service as provided in 31 CFR Part 10 (Treasury Department Circular No. 230) if he has otherwise complied with the applicable requirements of §§ 601.521–601.527 of this chapter. The Assistant Regional Commissioner may be represented in proceedings under §§ 181.73 and 181.75 by an attorney in the office of the regional counsel who is authorized to execute and file motions, briefs, and other papers in the proceedings, on behalf of the Assistant Regional Commissioner, in his own name as "Attorney for the Government."

§ 181.79 Appeal on petition to the Director.

An appeal to the Director is not required prior to filing an appeal with the U.S. Court of Appeals for judicial review. An appeal may be taken by the applicant, licensee, or permittee to the Director from a decision resulting from a hearing under § 181.73 or § 181.75. An appeal may also be taken by an Assistant Regional Commissioner from a decision resulting from a hearing under § 181.75 as provided in § 181.76(b). Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of an examiner's decision or an order. The petition shall set forth facts tending to show (a) action of an arbitrary nature, (b) action without reasonable warrant in fact, or (c) action contrary to law and regulations. A copy of the petition shall be filed with the Assistant Regional Commissioner or served on the applicant, licensee, or permittee, as the case may be. In the event of such appeal, the Assistant Regional Commissioner shall immediately forward the complete original record, by certified mail, to the Director for his consideration, review, and disposition in the manner provided in Subpart I of Part 200 of this chapter. When, on appeal, the Director affirms the initial decision of the Assistant Regional Commissioner or the examiner, as the case may be, such initial decision shall be final.

§ 181.80 Court review.

An applicant, licensee, or permittee may, within 60 days after receipt of the decision of the examiner or the final order of the Assistant Regional Commissioner or the Director, file a petition for a judicial review thereof, with the U.S. Court of Appeals for the district in which he resides or has his principal place of business. The Director, upon notification that such petition has been filed, shall have prepared, in triplicate, a complete transcript of the record of the proceedings. The Assistant Regional Commissioner or the Director, as the case may be, will certify to the correctness of such transcript of the record, forward one copy to the attorney for the Government in the review of the case, and file the original record of the proceedings with the original certificate in the U.S. Court of Appeals.

§ 181.81 Service on applicant, licensee, or permittee.

All notices and other formal documents required to be served on an applicant, licensee, or permittee under this subpart shall be served by certified mail or by personal delivery. Where service is by personal delivery, the signed duplicate original copy of the formal document shall be delivered to the applicant, licensee, or permittee, or, in the case of a corporation, partnership, or association, by delivering it to an officer, manager, or general agent thereof, or to its attorney of record.

§ 181.82 Provisions of Part 200 made applicable.

The provisions of Subpart G of Part 200 of this chapter, as well as those provisions of Part 200 relative to failure to appear, withdrawal of an application or surrender of a permit, the conduct of hearings before a hearing examiner, and record of testimony are hereby made applicable to application, license, and permit proceedings under this subpart to the extent that they are not contrary to or incompatible with the provisions of this subpart.

§ 181.83 Operations by licensees or permittees after notice of denial or revocation.

In any case where a notice of revocation has been issued and a request for a stay of the effective date of the revocation has not been granted, the licensee or permittee may not engage in the activities covered by the license or permit pending the outcome of proceedings under this subpart. In any case where notice of revocation has been issued but a stay of the effective date of the revocation has been granted, the licensee or permittee may continue to engage in the activities covered by his license or permit unless or until formally notified to the contrary: *Provided,* That in the event the license or permit would have expired before proceedings under this subpart are completed, timely renewal application must have been filed to continue the license or permit beyond its expiration date. In any case where a notice of denial of a renewal application has been issued, the licensee or permittee may continue to engage in the activities covered by the existing license or permit after the date of expiration thereof until proceedings under this subpart are completed.

Subpart F—Conduct of Business or Operations

§ 181.101 Posting of license or permit.

Licenses or permits issued under this part or copies thereof shall be kept posted and kept available for inspection on the business premises at each place where explosive materials are manufactured, imported, or distributed and in each magazine of an approved storage facility.

§ 181.102 Authorized operations by permittees and certain licensees.

(a) *In general.* The license issued to a manufacturer-limited does not authorize such licensee to engage in another class of business required to be licensed under the Act or this part. Therefore if such licensee intends to manufacture explosive materials for purposes of sale or distribution or to deal in explosive materials, he shall so qualify. Similarly, a permit issued under this part does not authorize the permittee to engage in the business of manufacturing, importing, or dealing in explosive materials. Accordingly if a permittee's operations bring him within the definition of a manufacturer, importer, or dealer under this part he shall qualify as such.

(b) *Distributions of surplus stocks.* Licensed manufacturers-limited and permittees are not authorized to engage in the business of sale or distribution of explosive materials. However, such licensees or permittees may dispose of surplus stocks of explosive materials to other licensees or permittees in accordance with the provisions of § 181.103, and to nonlicensees or to nonpermittees in accordance with the provisions of § 181.105 (d).

§ 181.103 Sales or distributions between licensees or between licensees and permittees.

(a) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to another licensee or permittee, or a permittee or a licensed manufacturer-limited disposing of surplus stock to another permittee or licensee, shall verify the identity and the status as a licensee or permittee of the distributee prior to making the transaction. Such verification shall be established by the distributee furnishing to the distributor a certified copy (in the case of a user-limited, the original) of the distributee's license or permit and by such other means as the distributor deems necessary: *Provided,* That it shall not be required (1) for a distributee who has furnished a certified copy of his license or permit to a distributor to again furnish such certified copy to that distributor during the term of the distributee's current license or permit, and (2) for the licensees of multilicensed business organizations to furnish certified copies of their licenses to other licensed locations operated by such organization: *Provided further,* That a multilicensed business organization may furnish to a distributor in lieu of a certified copy of each license, a list certified to be

true, correct and complete, containing the name, address, license number, and the date of license expiration of each licensed location operated by such organization, and the distributor may sell or otherwise dispose of explosive materials as appearing on such list without requiring a certified copy of a license therefrom. A distributor licensee who has the certified information required by this section may sell or distribute explosive materials to a licensee or permittee for not more than 45 days following the expiration date of the distributee's license or permit, unless the distributor knows or has reason to believe that the distributee's authority to continue business or operations under this part has been terminated.

(b) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to another licensee or permittee, or a permittee or a licensed manufacturer-limited disposing of surplus stocks to another permittee or licensee, which is a business entity shall verify the identity of the representative or agent of the business entity who is authorized to acquire explosive materials on behalf of such business entity. Each business entity acquiring explosive materials shall furnish the licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee with a current certified list of representatives or agents authorized to acquire explosive materials on behalf of such business entity showing the name, address, and date and place of birth of each such representative or agent. A licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee shall not distribute explosive materials to a business entity on the order of a person who does not appear on such list.

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee acquiring explosive materials from another licensee or permittee shall furnish such licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee with a certified current statement of the intended use of the explosive materials by such licensee or permittee (such as resale, mining, quarrying, agriculture, construction, road building, oil well drilling, seismographic research, or other specified lawful activity) and specifying the name, address, date, and place of birth, social security number of the distributee where the distributee is a natural person. In the case of a business entity such statement shall specify the intended use, taxpayer identification number, the identity and principal and local places of business of such business entity and the information required by paragraph (b) of this section. A licensee or permittee who has furnished such statement to a licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee shall not be required to again furnish such statement to that distributor if the information on the statement remains unchanged.

(d) Where possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing such possession. Prior to the delivery at the distributor's premises of explosive materials to an employee of a licensee or permittee, or to an employee of a carrier transporting explosive materials to a licensee or permittee, the distributor so delivering explosive materials shall obtain an executed Form 4721 from such employee before releasing the explosive materials. The Form 4721 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(e) The user-limited permit issued under the provisions of this part is valid only for a single transaction and is not renewable (see § 181.51). Accordingly, each permittee holding a user-limited permit shall at the time he acquires explosive materials from a licensed importer, licensed manufacturer, or licensed dealer present his permit to such licensee. The licensed importer, licensed manufacturer, or licensed dealer shall write across the face of such permit "Transaction completed", sign his name and indicate his license number, and return the permit to the permittee.

§ 181.104 Certified copy of license or permit.

Except as provided in § 181.49(a), each person issued a permit under the provisions of this part shall be furnished together with his license or permit a copy thereof for his certification. If such a person desires an additional copy of his license or permit for certification and for use pursuant to § 181.103, he shall:

(a) Make a reproduction of the copy of his license or permit and execute the certification thereon, or

(b) Make a reproduction of his license or permit, enter upon such reproduction the statement: "I certify that this is a true copy of a (*insert the word license or permit*) issued to me to engage in the business or operations specified in Item 5" and sign his name adjacent thereto, or

(c) Submit a request, in writing, for certified copies of his license or permit to the Assistant Regional Commissioner for the Internal Revenue region in which the license or permit was issued. The request shall set forth the name, trade name (if any), and address of the licensee or permittee and the number of copies of the license or permit desired. There shall be imposed a fee of $1 for each copy of a license or permit issued by the Assistant Regional Commissioner under the provisions of this paragraph. Fee payment shall accompany each such request for additional copies of a licence or permit. Such fee shall be paid by (1) cash, or (2) money order or check made payable to the Internal Revenue Service.

§ 181.105 Distributions to nonlicensees and nonpermittees.

(a) The provisions of this section shall apply in any case where distribution of explosive materials to the distributee is not otherwise prohibited by the Act or this part.

(b) Except as provided in paragraph (c) of this section, a licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which the licensee's business premises are located, and the nonlicensee or nonpermittee furnishes to the licensee the explosives transaction record, Form 4710, required by § 181.126. Disposition of Form 4710 shall be made in accordance with the provisions of § 181.126(c).

(c) A licensed importer, licensed manufacturer, or licensed dealer may sell or distribute explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the purchaser's State of residence has enacted legislation, currently in force, specifically authorizing a resident of that State to purchase explosive materials in a contiguous State and the purchaser and the licensee have, prior to the distribution of the explosive materials, complied with all the requirements of paragraphs (b), (e), and (f) of this section applicable to intrastate transactions occurring on the licensee's business premises.

(d) A licensed manufacturer-limited or a permittee may distribute surplus stocks of explosive materials to a nonlicensee or nonpermittee if the nonlicensee or nonpermittee is a resident of the same State in which such licensee's or permittee's business premises or operations are located, or is a resident of a State contiguous to the State in which the licensee's or permittee's place of business or operations are located, and if the requirements of paragraphs (b), (c), (e), and (f) of this section are fully met.

(e) A licensed importer, licensed manufacturer, or licensed dealer selling or otherwise distributing explosive materials to a business entity shall verify the identity of the representative or agent of the business entity who is authorized to acquire explosive materials on behalf of such business entity. Each business entity acquiring explosive materials shall furnish the licensed importer, licensed manufacturer, or licensed dealer with a current certified list of the names of representatives or agents authorized to acquire explosive materials on behalf of such business entity. A licensed importer, licensed manufacturer, or licensed dealer shall not distribute explosive materials to a business entity on the order of a person whose name does not appear on such list.

(f) Where the possession of explosive materials is transferred at the distributor's premises, the distributor shall in all instances verify the identity of the person accepting possession on behalf of the distributee before relinquishing

such possession. Prior to the delivery at the distributor's premises of explosive materials to an employee of a nonlicensee or nonpermittee, or to an employee of a carrier transporting explosive materials to a nonlicensee or nonpermittee, the distributor so delivering explosive materials shall obtain an executed Form 4721 from such employee before releasing the explosive materials. The Form 4721 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

§ 181.106 Certain prohibited distributions.

(a) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute explosive materials to any person not licensed or holding a permit under this part, who the licensee knows does not reside in the State in which the licensee's place of business is located: *Provided*, That the foregoing provisions of this paragraph shall not apply to the distribution of explosive materials to a resident of a State contiguous to the State in which the licensee's place of business is located if the requirements of § 181.105(c) are fully met.

(b) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute any explosive materials to any person (1) who the importer, manufacturer, or dealer knows is less than 21 years of age, or (2) in any State where the purchase, possession, or use by such person of such explosive materials would be in violation of any State law or any published ordinance applicable at the place of distribution, or (3) who the importer, manufacturer, or dealer has reason to believe intends to transport such explosive materials into a State where the purchase, possession, or use of explosive materials is prohibited or which does not permit its residents to transport or ship explosive materials into such State or to receive explosive materials in such State, or (4) who the importer, manufacturer, or dealer has reasonable cause to believe intends to use such explosive materials for other than a lawful purpose.

(c) A licensed importer, licensed manufacturer, licensed manufacturer-limited, or licensed dealer shall not distribute any explosive materials to any person knowing that such person (1) is, except as provided under § 181.142 (d) and (e), under indictment for, or has been convicted in any any court of, a crime punishable by imprisonment for a term exceeding 1 year, (2) is a fugitive from justice, (3) is an unlawful user of marihuana (as defined in section 4761 of the Internal Revenue Code of 1954; 26 U.S.C. 4761) or any depressant or stimulant drug (as defined in section 201 (v) of the Federal Food, Drug, and Cosmestic Act; 21 U.S.C. 321(v)), or narcotic drug (as defined in section 4731(a) of the Internal Revenue Code of 1954; 26 U.S.C. 4731(a)), or (4) has been adjudicated as a mental defective or has been committed to a mental institution.

§ 181.107 Record of transactions.

Every licensee and permittee shall maintain records of explosive materials in such form and manner as is prescribed by Subpart G of this part.

§ 181.108 Importation.

Explosive materials imported or brought into the United States by a licensed importer or permittee may be released from Customs custody to the licensed importer or permittee upon proof of his status as a licensed importer or permittee. Such status shall be established by the licensed importer or permittee furnishing to the Customs officer a certified copy of his license or permit (see § 181.104). The provisions of this section are in addition to, and are not in lieu of, any applicable requirement under Part 180 of this chapter.

§ 181.109 Identification of explosive materials.

Each licensed manufacturer of explosive materials on or after February 12, 1971, shall legibly identify by marking all explosive materials he manufactures for sale or distribution. The marks required by this section shall identify the manufacturer and the location, date, and shift of manufacture. The licensed manufacturer shall place on each cartridge, bag, or other immediate container of explosive materials manufactured for sale or distribution the required mark which shall also be placed on the outside container, if any, used for their packaging.

Subpart G—Records and Reports

§ 181.121 General.

(a) The records pertaining to explosive materials prescribed by this part shall be in permanent form, and shall be retained on the licensed or permit premises in the manner prescribed by this subpart.

(b) Internal revenue officers may enter the premises of any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee for the purpose of examining or inspecting any record or document required by or obtained under this part (see § 181.24). Section 843(f) of the Act requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to make such records available for such examination or inspection at all reasonable times. Section 843(f) of the Act also requires licensed importers, licensed manufacturers, licensed manufacturers-limited, licensed dealers, and permittees to submit such reports and information with respect to such records and the contents thereof as the regulations contained in this part prescribe.

(c) Each licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, and permittee shall maintain such records of importation, production, shipment, receipt, sale, or other disposition, whether temporary or permanent, of explosive materials as the regulations contained in this part prescribe. Section 842(g) of the Act makes it unlawful for any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee knowingly to make any false entry in any record required to be maintained pursuant to the Act and the regulations contained in this part.

§ 181.122 Records maintained by importers.

(a) Each licensed importer of explosive materials shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed importer shall take such an inventory as of February 12, 1971, or at the time of commencing business subsequent thereto, which shall be the effective date of the license issued upon original qualification under this part; at the time of changing the location of his premises to another region; at the time of discontinuing business, and at such other times as the Assistant Regional Commissioner may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the Assistant Regional Commissioner, and the duplicate shall be retained by the licensed importer. (See also § 181.127.)

(b) Each licensed importer shall not later than the close of the next business day following the date of importation or other acquisition, record the quantity and class of explosive materials, as prescribed in the Explosives List, manufacturer, manufacturers' marks of identification (if any), and country of manufacture of explosive materials he imports or otherwise acquires, and the date such importation or other acquisition was made.

(c) A record of explosive materials distributed by a licensed importer to another licensee or permittee shall be maintained by the licensed importer on his licensed premises and shall show the quantity, class, manufacturer, manufacturers' marks of identification (if any), country of manufacture, and license or permit number of the licensee or permittee to whom the explosive materials were distributed, and the date of the transaction. The information required by § 181.103 (c) and (d) shall also be maintained as part of the records of the licensed importer. The information required by this paragraph shall be entered in the proper record book not later than the close of the next business day following the date of the transaction.

(d) Notwithstanding the provisions of paragraph (c) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed importer to record his distribution of explosive materials when it is shown by the licensed importer that such alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed importer who proposes to use alternate records shall submit a letter application, in duplicate, to

the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed importer until approval in such regard is received from the Assistant Regional Commissioner.

(e) Each licensed importer shall maintain separate records of the sales or other distribution made of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126.

§ 181.123 Records maintained by licensed manufacturers.

(a) Each licensed manufacturer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed manufacturer shall take such an inventory as of February 12, 1971, or at the time of commencing business subsequent thereto, which shall be the effective date of the license issued upon original qualification under this part; at the time of changing location of his premises to another region; at the time of discontinuing business, and at such other times as the Assistant Regional Commissioner may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the Assistant Regional Commissioner, and the duplicate shall be retained by the licensed manufacturer. (See also § 181.127.)

(b) Each licensed manufacturer shall record the marks of identification (if any) the quantity and class of explosive materials, as prescribed in the Explosives List, he manufacturers or otherwise acquires, and the date of such manufacture or acquisition. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such manufacture or acquisition.

(c) (1) A record of explosive materials distributed by a licensed manufacturer to another licensee or permittee shall be maintained by the licensed manufacturer on his licensed premises and shall show the marks of identification (if any), the quantity, class, manufacturer, or importer, as applicable, if acquired other than by his manufacture, and license or permit number of the licensee or permittee to whom the explosive materials were distributed, and the date of the transaction. The information required by § 181.103 (c) and (d) shall also be maintained as part of the records of the licensed manufacturer. The information required by this paragraph shall be entered in the proper record book not later than the close of the next business day following the date of the transaction.

(2) Each licensed manufacturer who manufactures explosive materials for his own use shall record in a separate permanent record the quantity and class of explosive materials, as prescribed in the Explosives List, he daily uses and the date of such use. The information required by this subparagraph shall be recorded not later than the close of the next business day following the date of such use.

(d) Notwithstanding the provisions of paragraph (c) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed manufacturer to record his distribution or use of explosive materials when it is shown by the licensed manufacturer that such alternate records will accurately and readily disclose the information required by paragraph (c) of this section. A licensed manufacturer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed manufacturer until approval in such regard is received from the Assistant Regional Commissioner.

(e) Each licensed manufacturer shall maintain separate records of the sales or other distributions made of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126.

§ 181.124 Records maintained by dealers.

(a) Each licensed dealer shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. The licensed dealer shall take such an inventory as of February 12, 1971, or at the time of commencing business subsequent thereto, which shall be the effective date of the license issued upon original qualification under this part; at the time of changing location of his premises to another region; at the time of discontinuing business, and at such other times as the Assistant Regional Commissioner may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the Assistant Regional Commissioner, and the duplicate shall be retained by the licensed dealer. (See also § 181.127.)

(b) Each licensed dealer shall enter into a permanent record each purchase or other acquisition of explosive materials. The purchase or other acquisition of explosive materials by a licensed dealer shall, except as provided in paragraph (c) of this section, be recorded not later than the close of the next business day following the date of such purchase or acquisition. The record shall show the date of receipt, the name, address and license or permit number of the person from whom received, the name of the manufacturer and importer (if any), the manufacturers' marks of identification (if any), and the quantity and class of explosive materials as prescribed in the Explosives List.

(c) When a commercial record is maintained by a licensed dealer showing his purchase or acquisition of explosive materials, and such record contains all acquisition information required by the permanent record prescribed by paragraph (b) of this section, the licensed dealer acquiring such explosive materials may, for a period not exceeding 7 days following the date of such acquisition, delay making the required entry into such permanent record: *Provided*, That the commercial record is, until such time as the required entry into the permanent record is made, (1) maintained by the licensed dealer separate from other commercial documents maintained by such licensee, and (2) readily available for inspection on the licensed premises.

(d) A permanent record of explosive materials sold or otherwise distributed by a licensed dealer to another licensee or permittee shall be maintained by the licensed dealer on his licensed premises and shall show the quantity, class of explosive materials, as prescribed in the Explosives List, the name of the manufacturer and importer (if any), the manufacturers' marks of identification (if any), the license or permit number of the licensee or permittee to whom the explosive materials were distributed, and the date of the transaction. The information required by § 181.103 (c) and (d) shall also be maintained as part of the records of the licensed dealer. The information required by this paragraph shall be entered in the permanent record in the manner required in paragraphs (b) and (c) of this section with respect to acquisition of explosive materials.

(e) Notwithstanding the provisions of paragraphs (b) and (d) of this section, the Assistant Regional Commissioner may authorize alternate records to be maintained by a licensed dealer to record his acquisition or disposition of explosive materials, when it is shown by the licensed dealer that such alternate records will accurately and readily disclose the required information. A licensed dealer who proposes to use alternate records shall submit a letter application, in duplicate, to the Assistant Regional Commissioner and shall describe the proposed alternate records and the need therefor. Such alternate records shall not be employed by the licensed dealer until approval in such regard is received from the Assistant Regional Commissioner.

(f) Each licensed dealer shall maintain separate records of the sales or other distributions made of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126.

§ 181.125 Records maintained by licensed manufacturers-limited and permittees.

(a) Each licensed manufacturer-limited and each permittee shall take true and accurate inventories which shall include all explosive materials on hand required to be accounted for in the records kept under this part. Such inventory shall be made on February 12, 1971, or at the time of commencing business or operations subsequent thereto, which shall be the effective date of the license or permit upon original qualification

under this part; at the time of changing the location of his premises to another region; at the time of discontinuing business or operations, and at such other times as the Assistant Regional Commissioner may in writing require. Each inventory shall be prepared in duplicate, the original of which shall be submitted to the Assistant Regional Commissioner, and the duplicate shall be retained by the licensee or permittee. (See also § 181.127.)

(b) A licensed manufacturer-limited distributing surplus stocks of explosive materials to other licensees or to permittees shall record in the permanent record not later than the close of the next business day following the date of the distribution, the information prescribed in § 181.123(c)(1). Each licensed manufacturer-limited shall maintain separate records of distributions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126.

(c) Each permittee shall record in a permanent record the manufacturers' marks of identification (if any), the quantity and class of explosive materials, as prescribed in the Explosives List, he daily acquires and uses, the date of such acquisition or use, and the name, address and license number of the person from whom explosive materials were obtained. The information required by this paragraph shall be recorded not later than the close of the next business day following the date of such acquisition or use. A permittee distributing surplus stocks of explosive materials to other permittees or to licensees shall record in the permanent record not later than the close of the next business day following the date of the distribution, the information prescribed in § 181.124(d). Each permittee shall maintain separate records of distributions of surplus stocks of explosive materials to nonlicensees or nonpermittees. Such records shall be maintained in the form and manner as prescribed by § 181.126.

§ 181.126 Explosives transaction record.

(a) A licensee or permittee shall not sell or otherwise distribute, temporarily or permanently, explosive materials to any person, other than another licensee or permittee, unless he records the transaction on an explosives transaction record, Form 4710.

(b) Prior to the sale or other distribution of explosive materials to a nonlicensee or nonpermittee who is a resident of the State in which the licensee or permittee maintains his business premises or who is not a resident of the State in which the licensee or permittee maintains his business premises and such nonlicensee or nonpermittee is acquiring explosive materials under the provisions contained in § 181.105(c), the licensee or permittee so distributing the explosive materials shall obtain an executed Form 4710 from the distributee. The Form 4710 shall contain all of the information as indicated by the headings on the form and the instructions thereon or issued in respect thereto, and as required by this part.

(c) Form 4710 shall be completed in duplicate, the original of which shall be retained by the licensee or permittee as part of his permanent records in accordance with the requirements in paragraph (d) of this section, and the copy shall be forwarded to the Assistant Regional Commissioner on or before the close of business on the business day next succeeding that on which the transaction occurs.

(d) Each original Form 4710 shall be retained in numerical (by transaction serial number) order commencing with "1" and continuing in regular sequence. When the numbering of any series reaches "1,000,000", the licensee or permittee may recommence the series. The recommenced series shall be given an alphabetical prefix or suffix. Where there is a change in proprietorship, or in the individual, firm, corporate name, or trade name, the series in use at the time of such change may be continued.

(e) The requirements of this section shall be in addition to any other record-keeping requirement contained in this part.

(f) A licensee or permittee may obtain, upon request, a supply of Form 4710 from any Assistant Regional Commissioner or any District Director.

§ 181.127 Daily summary of magazine transactions.

In taking the inventory required by §§ 181.122, 181.123, 181.124, and 181.125, the inventory shall be entered in a record of daily transactions to be maintained at each magazine of an approved storage facility. At the close of business of each day each licensee and permittee shall record by class of explosive materials, as prescribed in the Explosives List, the total quantity received in and removed from each magazine during the day and the total remaining on hand at the end of the day. Any discrepancy which might indicate a theft or loss of explosive materials shall be reported in accordance with the provisions of § 181.29.

§ 181.128 Discontinuance of business.

Where an explosive materials business or operations is discountinued and succeeded by a new licensee or permittee the records prescribed by this subpart shall appropriately reflect such facts and shall be delivered to the successor. Where discontinuance of the business or operations is absolute, the records prescribed by this subpart shall be delivered within 30 day following the business or operations discontinuance to the Assistant Regional Commissioner for the internal revenue region in which the business was operated: *Provided, however,* Where State law or local ordinance requires the delivery of records to other responsible authority, the Assistant Regional Commissioner may arrange for the delivery of the records required by this subpart to such authority. (See also § 181.61.)

§ 181.129 Exportation.

Explosive materials shall be exported in accordance with the applicable provisions of section 414 of the Mutual Security Act of 1954 (22 U.S.C. 1934) and regulations thereunder. However, licensed manufacturers, licensed importers, and licensed dealers exporting explosive materials shall maintain records showing the manufacture or acquisition of explosive materials as required by this part and records showing the quantity and class of explosive materials, as prescribed in the Explosives List, the name and address of the foreign consignee of the explosive materials and the date the explosive materials were exported.

Subpart H—Exemptions

§ 181.141 General.

The provisions of this part shall not apply with respect to:

(a) Any aspect of the transportation of explosive materials via railroad, water, highway, or air which are regulated by the U.S. Department of Transportation, and agencies thereof.

(b) The use of explosive materials in medicines and medicinal agents in the forms prescribed by the official United States Pharmacopoeia, or the National Formulary.

(c) The transportation, shipment, receipt, or importation of explosive materials for delivery to any agency of the United States or to any State or political subdivision thereof.

(d) Small arms ammunition and components thereof.

(e) Black powder in quantities not to exceed five pounds.

(f) The manufacture under the regulation of the military department of the United States of explosive materials for, or their distribution to or storage or possession by the military or naval services or other agencies of the United States.

(g) Arsenals, navy yards, depots, or other establishments owned by, or operated by or on behalf of, the United States.

(h) The importation and distribution of fireworks in a finished state, commonly sold at retail for personal use in compliance with State laws or local ordinances.

(i) Gasoline, fertilizers, propellant actuated devices, or propellant actuated industrial tools manufactured, imported, or distributed for their intended purposes.

§ 181.142 Relief from disabilities incurred by indictment or conviction.

(a) Any person may make application for relief from the disabilities under the Act incurred by reason of an indictment for or conviction of a crime punishable by imprisonment for a term exceeding 1 year.

(b) An application for such relief shall be addressed to the Commissioner and shall include such supporting data as the applicant deems appropriate. In the case of a corporation, the supporting data should include information as to the absence of culpability in the offense of which the corporation was indicted or convicted, or of any person having the

power to direct or control the management of the corporation, if such be the fact. The application shall be filed, in triplicate, with the Assistant Regional Commissioner for the internal revenue region wherein the business premises are located or the applicant resides.

(c) The Commissioner may grant relief to an applicant if it is established to the satisfaction of the Commissioner that the circumstances regarding the indictment or conviction, and the applicant's record and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety, and that the granting of the relief would not be contrary to the public interest.

(d) A person who has been granted relief under this section shall be relieved of any disabilities imposed by the Act with respect to engaging in the business of importing, manufacturing, or dealing in explosive materials, or the purchase of explosive materials incurred by reason of such indictment or conviction.

(e) (1) A licensee or permittee who is indicted for or convicted of a crime punishable by imprisonment for a term exceeding 1 year during the term of a current license or permit or while he has pending a license or permit renewal application shall not be barred from licensed or permit operations for 30 days after the date of indictment or 30 days after the date upon which his conviction becomes final, and if he files his application for relief as provided by this section within such 30-day period, he may further continue licensed or permit operations during the pendency of his application. A licensee or permittee who does not file an application within 30 days from the date of his indictment or within 30 days from the date his conviction becomes final, shall not continue licensed or permit operations beyond 30 days from the date of his indictment or beyond 30 days from the date his conviction becomes final.

(2) In the event the term of a license or permit of a person expires during the 30-day period following the date of indictment or during the 30-day period after the date upon which his conviction becomes final or during the pendency of his application for relief, he must file a timely application for renewal of his license or permit in order to continue licensed or permit operations. Such license or permit application shall show that the applicant has been indicted for or convicted of a crime punishable by imprisonment for a term exceeding 1 year.

(3) A licensee or permittee shall not continue licensed or permit operations beyond 30 days following the date the Commissioner issues notification that the licensee's or permittee's application for removal of the disabilities resulting from an indictment or conviction has been denied.

(4) When as provided in this section a licensee or permittee may no longer continue licensed or permit operations, any application for renewal of license or permit filed by the licensee or permittee during the pendency of his application for removal of disabilities resulting from an indictment or conviction, shall be denied by the Assistant Regional Commissioner.

Subpart I—Unlawful Acts, Penalties, Seizures, and Forfeitures

§ 181.161 Engaging in business without a license.

Any person engaging in the business of importing, manufacturing, or dealing in explosive materials without a license issued under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§ 181.162 False statement or representation.

Any person who knowingly withholds information or makes any false or fictitious oral or written statement or furnishes or exhibits any false, fictitious, or misrepresented identification, intended or likely to deceive for the purpose of obtaining explosive materials, or a license, permit, exemption, or relief from disability under the Act, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§ 181.163 False entry in record.

Any licensed importer, licensed manufacturer, licensed manufacturer-limited, licensed dealer, or permittee who knowingly makes any false entry in any record required to be kept pursuant to Subpart G of this part, shall be fined not more than $10,000 or imprisoned not more than 10 years, or both.

§ 181.164 Unlawful storage.

Any person who stores any explosive material in a manner not in conformity with the provisions of Subpart J of this part, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 181.165 Failure to report theft or loss.

Any person who has knowledge of the theft or loss of any explosive materials from his stock and fails to report such theft or loss within 24 hours of discovery thereof in accordance with § 181.30, shall be fined not more than $1,000 or imprisoned not more than 1 year, or both.

§ 181.166 Seizure or forfeiture.

Any explosive material involved or used or intended to be used in any violation of the provisions of the Act or of this part, or in any violation of any criminal law of the United States shall be subject to seizure and forfeiture, and all provisions of the Internal Revenue Code of 1954 (title 26, U.S.C.) relating to the seizure, forfeiture, and disposition of firearms, as defined in section 5845(a) of that Code (26 U.S.C. 5845(a)), shall, so far as applicable, extend to seizures and forfeitures under the provisions of the Act.

Subpart J—Storage

§ 181.181 General.

(a) No person shall store any explosive materials in a manner not in conformity with the provisions of this subpart (see § 181.29). Section 842(j) of the Act requires that the storage of explosive materials by any person must be in a manner conforming with the regulations contained in this subpart. The storage standards prescribed by this subpart confer no rights or privileges to store explosive materials in a manner contrary to State or other law.

(b) Notwithstanding the provisions of paragraph (a) of this section, the Assistant Regional Commissioner may authorize alternate storage facilities for the storage of explosive materials when it is shown that such alternate facilities are or will be constructed in a manner substantially equivalent to the standards of construction contained in this subpart. Such alternate storage facilities shall not be used for the storage of explosive materials until approval is received from the Assistant Regional Commissioner.

(c) A licensee or permittee who intends to make additions to, modification of, or changes in his approved storage facilities shall follow the procedures and be subject to the requirements of § 181.54(c).

§ 181.182 Classes of explosive materials.

For purposes of this part, there shall be three classes of explosive materials. These classes, together with the description of explosive materials comprising each class, are as follows.

(a) *High explosives.* Explosive materials which can be caused to detonate by means of a blasting cap when unconfined.

(b) *Low explosives.* Explosive materials which can be caused to deflagrate when confined.

(c) *Blasting agents.*

§ 181.183 Types of storage facilities.

For purposes of this part, there shall be five types of storage facilities. These types, together with the classes of explosive materials which shall be stored therein, are as follows:

(a) *Type 1 storage facilities.* Permanent storage facilities for the storage of high explosives, subject to the limitations prescribed by §§ 181.186 and 181.193. Other classes may also be stored therein.

(b) *Type 2 storage facilities.* Portable indoor and outdoor storage facilities for the storage of high explosives, subject to the limitations prescribed by §§ 181.186, 181.188(b), and 181.193. Other classes may also be stored therein.

(c) *Type 3 storage facilities.* Portable outdoor facilities for the temporary storage of high explosives while attended (for example, a "day-box"), subject to the limitations prescribed by §§ 181.186 and 181.193. Other classes may also be stored therein.

(d) *Type 4 storage facilities.* Facilities for the storage of low explosives, subject

to the limitations prescribed by §§ 181.186 and 181.193. Blasting agents may also be stored therein.

(e) *Type 5 storage facilities.* Facilities for the storage of blasting agents, subject to the limitations prescribed by §§ 181.186 and 181.193.

§ 181.184 Inspection of storage facilities.

Any person storing explosive materials shall open and inspect his storage facilities at intervals not greater than 3 days to determine whether the explosives therein are intact and to determine whether there has been unauthorized entry or attempted entry into the storage facilities or the unauthorized removal of facilities or their contents.

§ 181.185 Movement of explosive materials.

All explosive materials must be kept in storage facilities meeting the standards prescribed by this subpart unless they are:

(a) In the process of manufacture, or

(b) Being physically handled in the operating process of a licensee or user, or

(c) Being used, or

(d) Being transported to a place of storage or use by a permittee or by a person who has lawfully acquired explosive materials pursuant to the requirements of § 181.126.

§ 181.186 Location of storage facilities.

(a) Except as otherwise provided in this subpart, storage facilities in which any explosive materials are stored shall be located at minimum distances from inhabited buildings, passenger railways, public highways, and from other storage facilities in which explosive materials are stored as specified in the American Table of Distances (see § 181.198). When a storage facility is not barricaded, the distances shown in the American Table of Distances shall be doubled. For purposes of this paragraph, a storage facility shall be deemed barricaded when it is effectually screened from inhabited buildings, passenger railways, public highways, and other storage facilities in which explosive materials are stored either by a natural or artificial barricade of such height that a straight line from the top of any sidewall of the storage facility to the eave line of such other inhabited building or storage facility, or to a point 12 feet above the center of a passenger railway or public highway, will pass through such intervening barricade.

(b) If any two or more storage facilities are separated from each other by less than the distances specified in § 181.198, then such two or more storage facilities, as a group, shall be considered as one storage facility, and the total quantity of explosive materials stored in such group shall be treated as if stored in a single facility and shall comply with the minimum of distances specified in § 181.198 from other storage facilities, inhabited buildings, passenger railways, and public highways.

§ 181.187 Construction of type 1 storage facilities.

A type 1 storage facility shall be a permanent structure: a building, an igloo or Army-type structure, a tunnel, or a dugout. It shall be bullet-resistant, fire-resistant, weatherproof, theft-resistant, and well ventilated. If located above ground, it shall be equipped with a lightning rod.

(a) *Buildings.* All building type storage facilities shall be constructed of masonry, wood, metal, or a combination of these materials and shall have no openings except for entrances and ventilation. Ground around such storage facilities shall slope away for drainage.

(1) *Masonry wall construction.* Masonry wall construction shall consist of brick, concrete, tile, cement block, or cinder block and shall be not less than 6 inches in thickness. Hollow masonry units used in construction shall have all hollow spaces filled with well-tamped coarse dry sand or weak concrete (a mixture of one part cement and eight parts of sand with enough water to dampen the mixture while tamping in place). Interior walls shall be covered with a nonsparking material.

(2) *Fabricated metal wall construction.* Metal wall construction shall consist of sectional sheets of steel or aluminum not less than number 14 gauge, securely fastened to a metal framework. Such metal wall construction shall be either lined inside with brick, solid cement blocks, hardwood not less than 4 inches in thickness, or shall have at least a 6-inch sand fill between interior and exterior walls. Interior walls shall be constructed of or covered with a nonsparking material.

(3) *Wood frame wall construction.* The exterior of outer wood walls shall be covered with iron or aluminum not less than number 26 gauge. An inner wall of nonsparking material shall be constructed so as to provide a space of not less than 6 inches between the outer and inner walls, which space shall be filled with coarse dry sand or weak concrete.

(4) *Floors.* Floors shall be constructed of a nonsparking material and shall be strong enough to bear the weight of the maximum quantity to be stored.

(5) *Foundations.* Foundations shall be constructed of brick, concrete, cement block, stone, or wood posts. If piers or posts are used, in lieu of a continuous foundation, the space under the buildings shall be enclosed with metal.

(6) *Roof.* Except for buildings with fabricated metal roofs, the outer roof shall be covered with no less than number 26-gauge iron or aluminum fastened to ⅞-inch sheathing.

(7) *Bullet-resistant ceilings or roofs.* Where it is possible for a bullet to be fired directly through the roof and into the storage facility at such an angle that the bullet would strike a point below the top of inner walls, storage facilities shall be protected by one of the following methods:

(i) A sand tray shall be located at the tops of inner walls covering the entire ceiling area, except that necessary for ventilation, lined with a layer of building paper, and filled with not less than 4 inches of coarse dry sand.

(ii) A fabricated metal roof shall be construction of 3/16-inch plate steel lined with 4 inches of hardwood. (For each additional 1/16-inch of plate steel, the hardwood lining may be decreased 1 inch.)

(8) *Doors.* All doors shall be constructed of ¼-inch plate steel and lined with 2 inches of hardwood. Hinges and hasps shall be attached to the doors by welding, riveting or bolting (nuts on inside of door). They shall be installed in such a manner that the hinges and hasps cannot be removed when the doors are closed and locked.

(9) *Locks.* Each door shall be equipped with two mortise locks; or with two padlocks fastened in separate hasps and staples; or with a combination of mortise lock and a padlock; or with a mortise lock that requires two keys to open; or a three-point lock. Locks shall be five-tumbler prof. All padlocks shall be protected with ¼-inch steel caps constructed so as to prevent sawing or lever action on the locks or hasps.

(10) *Ventilation.* Except at doorways, a 2-inch air space shall be left around ceilings and the perimeter of floors. Foundation ventilators shall be not less than 4 by 6 inches. Vents in the foundation, roof, or gables shall be screened, and offset where necessary, to prevent the entrance of sparks.

(11) *Exposed metal.* No sparking metal construction shall be exposed below the top of walls in the interior of storage facilities, and all nails therein shall be blind-nailed or countersunk.

(b) *Igloos, Army-type structures, tunnels, and dugouts.* Igloo, Army-type, tunnel, and dugout storage facilities shall be constructed of reinforced concrete, masonry, metal or a combination of these materials. They shall have an earthmound covering of not less than 24 inches on the top, sides and rear. Interior walls and floors shall be covered with a nonsparking material. Storage facilities of this type shall also be constructed in conformity with the requirements of paragraph (a)(4) and paragraphs (a) (8) through (11) of this section.

§ 181.188 Construction of type 2 storage facilities.

A type 2 storage facility shall be a box, a trailer, a semitrailer or other mobile facility. It shall be bullet-resistant, fire-resistant, weatherproof, theft-resistant, and well ventilated. Except as provided in paragraph (c) of this section, hinges and hasps shall be attached to the covers or doors in the manner prescribed in § 181.187(a)(8) and the locking system shall be that prescribed in § 181.187(a)(9). Each portable storage facility shall be grounded to prevent its buildup of static electricity.

(a) *Outdoor storage facilities.* Outdoor storage facilities shall be at least 1 cubic yard in size and supported in such a manner so as to prevent direct

contact with the ground. The sides, bottoms, tops, and covers or doors shall be constructed of ¼-inch steel and shall be lined with 2 inches of hardwood. Edges of metal covers shall overlap sides at least 1 inch. The ground around such storage facilities shall slope away for drainage. Vehicular storage shall have wheels removed when unattended.

(b) *Indoor storage facilities.* No indoor facility for the storage of explosive materials shall be located in a residence or dwelling. When located in a warehouse, wholsesale, or retail establishment, such storage facilities shall be provided with substantial wheels or casters to facilitate removal therefrom. No more than two indoor storage facilities shall be kept in any one building. When two indoor storage facilities are kept in a single building, blasting caps, squibs, or similar items shall be stored separately from other explosive materials (one storage facility shall be used for storage of blasting caps, squibs, and similar items, and the other shall be used for storage of other explosive materials). Each storage facility shall be located on the floor nearest the ground level and within 10 feet of an outside exit. Indoor storage facilities within one building shall be separated by a distance of not less than 10 feet. No indoor storage facility shall contain a quantity of high explosives in excess of 50 pounds or more than 5,000 blasting caps. Indoor facilities shall be of wood or metal construction as prescribed in subparagraphs (1) or (2) of this paragraph.

(1) *Wood construction.* Wood indoor storage facilities shall have sides, bottoms, and covers or doors constructed of 2-inch hardwood and shall be well braced at corners. They shall be made bullet-resistant by a covering of sheet metal of not less than number 20-guage metal. Nails exposed to the interior of such facilities shall be countersunk.

(2) *Metal construction.* Metal indoor storage facilities shall have sides, bottoms, and covers or doors constructed of number 12-guage metal and shall be lined inside with a nonsparking material. Edges of metal covers shall overlap sides at least 1 inch.

(c) *Cap boxes.* Storage facilities for blasting caps in quantities of 100 or less shall have sides, bottoms, and covers constructed of number 12-guage metal and lined with a nonsparking material. Hinges and hasps shall be attached thereto by welding. A single five-tumbler proof lock shall be sufficient for locking purposes.

§ 181.189 Construction of type 3 storage facilities.

A type 3 storage facility shall be a "day-box" or other portable facility. It shall be constructed in the same manner prescribed for type 2 outdoor storage facilities in § 181.188(a), except that it may be less than 1 cubic yard in size, and shall be bullet-resistant, fire-resistant, weatherproof, theft-resistant, and well ventilated. Hinges, hasps, locks, and lock protection shall be in conformity with the requirements of § 181.187(a) (8) and (9). The ground around such storage facilities shall slope away for drainage. No explosive materials shall be left in such facilities if unattended. The explosive materials contained therein must be removed to types 1 or 2 storage facilities for unattended storage.

§ 181.190 Construction of type 4 storage facilities.

Type 4 storage facilities may be of any structural style specified for types 1, 2, and 3 and shall be fire-resistant, weatherproof, and theft-resistant. They shall be constructed of masonry, metal-covered wood, fabricated metal, or a combination of these materials. The walls and floors of such storage facilities shall be lined with a nonsparking material. The doors shall be solid wood or metal. The foundations, locks, lock protection, hinges, hasps, and interior shall be in conformity with the requirements of § 181.187(a) (5), (8), (9), and (11).

§ 181.191 Construction of type 5 storage facilities.

Type 5 storage facilities may be of any structural style specified for types 1, 2, 3, and 4 and shall be theft-resistant. The doors or covers thereof shall be solid wood or metal. The hinges, hasps, locks, and lock protection shall be in conformity with the requirements of § 181.187 (a) (8) and (9).

§ 181.192 Smoking and open flames.

Smoking, matches, open flames, and spark-producing devices shall not be permitted in, or within 100 feet of, any types 1, 2, or 3 storage facilities.

§ 181.193 Quantity and storage restrictions.

Explosive materials in excess of 300,000 pounds and blasting caps in excess of 20 million shall not be stored in one storage facility. Blasting caps shall not be stored with other explosive materials in the same storage facility.

§ 181.194 Storage within types 1, 2, 3, and 4 facilities.

(a) Explosive materials within a storage facility shall not be placed directly against masonry walls, bricklined, or sand filled metal walls, or single-thickness metal walls. Any devices constructed or placed within a storage facility shall not interfere with ventilation.

(b) Containers of explosive materials shall be stored by being laid flat with top sides up. Corresponding classes, grades, and brands shall be stored together within a storage facility in such a manner that class, grade, and brand marks are easily visible upon inspection. Stocks of explosive materials shall be stored so as to be easily counted and checked.

(c) Except with respect to fiberboard containers, containers of explosive materials shall not be unpacked or repacked inside a storage facility or within 50 feet thereof, and shall not be unpacked or repacked in close proximity to other explosive materials. Containers of explosive materials shall be securely closed while being stored.

(d) Tools used for opening or closing containers of explosive materials shall be of nonsparking materials, except that metal slitters may be used for opening fiberboard containers. A wood wedge and a fiber, rubber, or wooden mallet shall be used for opening or closing wood containers of explosive materials. Metal tools other than nonsparking transfer conveyors shall not be stored in any storage facility containing high explosives.

§ 181.195 Housekeeping.

Storage facilities shall be kept clean, dry, and free of grit, paper, empty packages and containers, and rubbish. Floors shall be regularly swept. Brooms and other utensils used in the cleaning and maintenance of storage facilities shall have no spark-producing metal parts. Floors stained by leakage from explosive materials shall be cleaned according to instructions of the manufacturer. When any explosive material has deteriorated to the extent that it is in a dangerous condition, or if a liquid leaks therefrom, it shall be destroyed in accordance with the instructions of its manufacturer. The grounds surrounding storage facilities shall be kept clear of rubbish, brush, dry grass, or trees for not less than 25 feet in all directions. Any other combustible materials shall be kept a distance of not less than 50 feet from storage facilities.

§ 181.196 Repair of storage facilities.

Prior to the interior repair of storage facilities, all explosive materials shall be removed and the interior shall be cleaned. Prior to the exterior repair of storage facilities, all explosive materials shall be removed if there exists a possibility that such repairs may produce sparks or flame. The explosive materials removed from storage facilities under repair shall either be placed in other storage facilities appropriate for the storage of such materials under this subpart or placed a safe distance from the facilities under repair where they shall be properly guarded and protected until the repairs have been completed.

§ 181.197 Lighting.

No lighting shall be placed or used in a storage facility of types 1, 2, 3, or 4 except battery-activated lights or battery-activated lanterns.

§ 181.198 American table of distances for storage of explosive materials.

Explosives		Distances in feet when storage is barricaded			
Pounds over	Pounds not over	Inhabited buildings	Passenger railways	Public highways	Separation of magazines
2	5	70	20	20	6
5	10	90	35	35	8
10	20	110	45	45	10
20	30	125	50	50	11
30	40	140	55	55	12
40	50	150	60	60	14
50	75	170	70	70	15
75	100	190	75	75	16
100	125	200	80	80	18
125	150	215	85	85	19
150	200	235	95	95	21
200	250	275	105	105	23

Explosives		Distances in feet when storage is barricaded			
Pounds over	Pounds not over	Inhabited buildings	Passenger railways	Public highways	Separation of magazines
250	300	270	110	110	24
300	400	295	120	120	27
400	500	320	130	130	29
500	600	340	135	135	31
600	700	355	145	145	32
700	800	375	150	150	33
800	900	390	155	155	35
900	1,000	400	160	160	36
1,000	1,200	425	170	165	39
1,200	1,400	450	180	170	41
1,400	1,600	470	190	175	43
1,600	1,800	490	195	180	44
1,800	2,000	505	205	185	45
2,000	2,500	545	220	190	49
2,500	3,000	580	235	195	52
3,000	4,000	635	255	210	58
4,000	5,000	685	275	225	61
5,000	6,000	730	295	235	65
6,000	7,000	770	310	245	68
7,000	8,000	800	320	250	72
8,000	9,000	835	335	255	75
9,000	10,000	865	345	260	78
10,000	12,000	875	370	270	82
12,000	14,000	885	390	275	87
14,000	16,000	900	405	280	90
16,000	18,000	940	420	285	94
18,000	20,000	975	435	290	98
20,000	25,000	1,055	470	315	105
25,000	30,000	1,130	500	340	112
30,000	35,000	1,205	525	360	119
35,000	40,000	1,275	550	380	124
40,000	45,000	1,340	570	400	129
45,000	50,000	1,400	590	420	135
50,000	55,000	1,460	610	440	140
55,000	60,000	1,515	630	455	145
60,000	65,000	1,565	645	470	150
65,000	70,000	1,610	660	485	155
70,000	75,000	1,655	675	500	160
75,000	80,000	1,695	690	510	165
80,000	85,000	1,730	705	520	170
85,000	90,000	1,760	720	530	175
90,000	95,000	1,790	730	540	180
95,000	100,000	1,815	745	545	185
100,000	110,000	1,835	770	550	195
110,000	120,000	1,855	790	555	205
120,000	130,000	1,875	810	560	215
130,000	140,000	1,890	835	565	225
140,000	150,000	1,900	850	570	235
150,000	160,000	1,935	870	580	245
160,000	170,000	1,965	890	590	255
170,000	180,000	1,990	905	600	265
180,000	190,000	2,010	920	605	275
190,000	200,000	2,030	935	610	285
200,000	210,000	2,055	955	620	295
210,000	230,000	2,100	980	635	315
230,000	250,000	2,155	1,010	650	335
250,000	275,000	2,215	1,040	670	360
275,000	300,000	2,275	1,075	690	385

(American Table of Distances for Storage of Explosives, as Revised and Approved by The Institute of Makers of Explosives, June 5, 1964)

[F.R. Doc. 70-16442; Filed, Dec. 3, 1970; 11:19 a.m.]

DEPARTMENT OF AGRICULTURE

Consumer and Marketing Service

[7 CFR Part 916]

NECTARINES GROWN IN CALIFORNIA

Increase in Expenses for 1970-71 Fiscal Period

Consideration is being given to the following proposal submitted by the Nectarine Administrative Committee, established under the marketing agreement, as amended, and Order No. 916, as amended (7 CFR Part 916), regulating the handling of nectarines grown in California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer the provisions thereof:

(a) That the Secretary find that provisions pertaining to the expenses in paragraph (a) of § 917.209 *Expenses and rate of assessment* (35 F.R. 11165) be amended as follows:

(a) *Expenses.* Expenses that are reasonable and likely to be incurred during the fiscal period March 1, 1970, through February 28, 1971, will amount to $304,000.

All persons who desire to submit written data, views, or arguments in connection with the aforesaid proposal shall file the same, in quadruplicate, with the Hearing Clerk, U.S. Department of Agriculture, Room 112, Administration Building, Washington, D.C. 20250, not later than the 15th day after the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Dated: December 2, 1970.

ARTHUR E. BROWNE,
Acting Director, Fruit and Vegetable Division, Consumer and Marketing Service.

[F.R. Doc. 70-16444; Filed, Dec. 7, 1970; 8:48 a.m.]

[7 CFR Parts 1006, 1012, 1013]

[Dockets Nos. AO-356-A8, AO-347-A12, AO-286-A20]

MILK IN UPPER FLORIDA, TAMPA BAY AND SOUTHEASTERN FLORIDA MARKETING AREAS

Decision on Proposed Amendments to Marketing Agreement and to Order

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Upper Florida, Tampa Bay, and Southeastern Florida marketing areas. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Orlando, Fla., on September 9, 1970, pursuant to notice thereof issued on August 26, 1970 (35 F.R. 13843).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Regulatory Programs, on November 6, 1970 (35 F.R. 17340; F.R. Doc. 70-15235), filed with the Hearing Clerk, U.S. Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein.

The material issues on the record of the hearing relate to:

1. Increasing the Class I differentials in the three Florida markets; and
2. Charging an administrative assessment on the milk handled by producer-handlers.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Class I prices in the three Florida markets should be increased 20 cents per hundredweight.

Witnesses for producer cooperatives in the Florida markets testified that an increase of 20 cents per hundredweight is necessary to encourage the additional production required to meet the Class I demands of the three markets.

It was the contention of producers that if the necessary production is to be maintained, there must be some assurance that prices in the coming months will be set at levels consistent with current and anticipated economic conditions affecting milk supplies. They alleged further that Florida producers now face the same uncertainties that prompted the general price assurance provided other producers in all other Federal order markets on the basis of regional hearings held in the spring of 1967.[1]

Amendment of the three Florida orders was not considered at any of such regional hearings. However, the Class I price levels in the Southeastern Florida and Tampa Bay markets were considered at hearings held in Tampa on April 26, 1967, and at Miami on May 1, 1967. No change was made in the levels of the Class I differentials as a result of these hearings. It was concluded that prospective supply-demand conditions in the Florida markets were such that no further incentive to producers was required at that time.

On April 1, 1970, Class I price differentials were reduced 15 cents per hundredweight in each of the three Florida markets. This action was taken as the result of a hearing held in Orlando, Fla., on April 9 and 10, 1968. Simultaneously with the reduction in the Class I differentials the Class I classification in each of the markets was expanded to include milk disposed of as buttermilk, flavored milk drinks, half and half, and cream. At the hearing producers had proposed that the Class I differentials be reduced as an offset to the increased utilization resulting from the changes in classification. It was estimated that a reduction of 15 cents in the Class I differentials would return to producers uniform prices com-

[1] Effective May 1, 1967, Class I differentials in all Federal order markets, other than the three Florida markets were increased 20 cents per hundredweight to prevent a decline in milk production nationally. Initially this increase was to be effective for 1 year. Subsequently, it was extended indefinitely and is still in effect.

This increase was based on the record of four regional hearings held Apr. 11, 12, 13, and 14, 1967, in Denver, Colo.; St. Louis, Mo.; Cleveland, Ohio; and Washington, D.C., respectively.

parable to those that would have resulted without the amendment.

Since 1967, however, the supply situation has deteriorated to some extent relative to the market needs. (In the following comparisons and elsewhere throughout this decision, the Class I utilization for all months prior to April 1970 has been adjusted to reflect the changes in classification which became effective on April 1, 1970). In the period of January through July 1967, producer receipts were equal to 118 percent of the Class I distribution of the regulated plants in the three Florida markets. In the same months of 1968, producer receipts were 113 percent of the Class I distribution. In both 1969 and 1970, producer receipts were only 106 percent of the handlers' Class I distribution for the same months.

A comparison of total receipts by handlers and producer-handlers with their total Class I disposition in the three Florida markets reflects the same pattern. In the first 7 months of 1967, total Class I disposition in the three Florida markets was 796.6 million pounds, or 86.8 percent of the total receipts of 917.3 million pounds. In the same months of 1970, total Class I disposition was 879.3 million pounds, or 94.7 percent of the total receipts of 928.7 million pounds.

Class I sales have been increasing at a rapid rate since 1967. For the entire year of 1968, Class I sales were 4 percent greater than in 1967. In 1969, Class I sales exceeded those of 1968 by 4.7 percent. This increase of almost 9 percent in the Florida markets from 1967 to 1969 is substantially greater than the increase that occurred for the country as a whole. Nationally, consumption of fluid milk and cream products in 1969 was only 1.8 percent greater than in 1967. Official notice is taken of the May 1970 issue of "Dairy Situation," a publication of the Economic Research Service of the U.S. Department of Agriculture.

In Florida this trend is continuing. For the first 7 months of 1970, Class I sales exceeded those of the same period in 1969 by 4.3 percent. In August 1970, the total Class I disposition was greater than in August 1969 by 4.7 million pounds, or 3.8 percent. In September 1970, total Class I disposition exceeded that of September 1969 by 5.65 million pounds or 4.4 percent. Class I disposition by regulated pool handlers in August 1970 was 9.8 percent greater than in August 1969. In September 1970, pool handlers disposed of 10.4 percent more Class I milk than in September 1969. Official notice is taken of the published statistics of the market administrator for the months of August and September 1970.

In August 1970, producer receipts equaled only 103 percent of the Class I sales of regulated handlers. In September 1970, producer receipts dropped to 94 percent of the Class I disposition of regulated handlers. To make up for this deficit, in September it was necessary to import from outside sources almost 13.2 million pounds of fluid milk and cream, compared to the 10.2 million pounds that were imported in September 1969.

Florida's population continues to increase at an above average rate, thus increasing the markets' needs for milk. Although production has been increasing, as noted above, the increase in production has failed to keep pace with the increased demand of Florida for milk.

Producers contend that unless the requested increase is granted, the disparity between receipts and market requirements will continue to widen. They pointed out that shortened supplies of corn and citrus pulp and substantial increases in the cost of feeds as well as other production factors threaten the supply of milk. Producers stated that an increased export market for citrus pulp has reduced the available supply and resulted in substantially increased costs. The price of citrus pulp, which in Florida is a major dairy feed, representing approximately 40 percent of the Florida dairy ration, has increased more than the prices of feeds generally. One producer testified that his average cost of citrus pulp during the first 7 months of 1970 was 25 percent greater than for the same period in 1969. Another producer testified that his most recent purchase of citrus pulp had cost him $50 per ton, while a year ago he had purchased citrus pulp as low as $25 per ton.

Producers pointed out that the corn blight which damaged much of the Nation's corn crop was especially severe in the South Atlantic States. The indicated corn crop for Florida and adjoining States is, in fact, substantially below that of a year ago. For Florida, the crop is estimated at 9,475 thousand bushels compared to the 13,962 thousand bushels harvested in 1969. In Alabama and Georgia the 1970 crops are indicated to be 13,800 thousand bushels and 43,007 thousand bushels, respectively, compared to yields of 17,332 thousand bushels and 47,059 thousand bushels in 1969. In this regard, official notice is taken of the latest issue of "Crop Production," a publication of the Statistical Reporting Service, U.S. Department of Agriculture, dated October 12, 1970.

Official notice is also taken of the September issue of "Milk Production," dated October 13, 1970, issued by the Statistical Reporting Service, U.S. Department of Agriculture. The price of 100 pounds of dairy ration in the South Atlantic States increased from $3.48 to $3.80 between September 1969 and 1970. Florida producers are now feeding 12 pounds of grain and other concentrate per cow daily, compared to 10 pounds a year ago.

Even with such increase the price of Class I milk to handlers will be less, at most points in Florida, than the cost of supplemental milk supplies purchased from other markets. Milk at times is imported into Florida from Georgia or from the Chattanooga, Tenn., area. In July the Class I price at Atlanta was $6.91 per hundredweight. Adding 1.5 cents per hundredweight for each 10 miles or fraction thereof from Atlanta, the Atlanta price plus transportation would be $7.39 at Jacksonville, Fla., $7.57 at Orlando, $7.60 at Tampa, and $7.915 at Miami. The Chattanooga Class I price plus transportation at the same rate would be $7.42 at Jacksonville, $7.60 at Orlando, $7.63 at Tampa and $7.945 at Miami. These amounts do not include the customary handling charge on imported milk.

The Class I prices under the Florida orders at these points in July were $7.26 at Jacksonville, $7.36 at Orlando and Tampa and $7.56 at Miami.

Available supplies from Chattanooga or Georgia are limited. When needed, supplemental milk is obtained from the Wisconsin-Minnesota area. The Chicago Class I price of $5.81, with only transportation added at the rate of 1.5 cents per 10 miles, results in a price of Wisconsin milk delivered to Jacksonville of $7.325; to Orlando, of $7.49; to Tampa, of $7.565; and to Miami, of $7.91.

Handlers proposed that the increase in the Class I differentials in the Florida markets should not exceed 15 cents per hundredweight. This amount would bring the differentials back up to the levels which prevailed prior to the amendments of April 1, 1970. As noted above, on that date Class I differentials in the three markets were reduced 15 cents per hundredweight coincidentally with a change in the classification provisions of the orders. The handlers stated that an increase of 15 cents also would establish the same competitive relationship with the Georgia market that existed prior to the amendments, and that a higher price might upset this relationship.

For the reasons set forth above, however, it is concluded that the Class I differentials in each of the Florida markets should be increased the proposed 20 cents per hundredweight.

2. An administrative assessment should not be imposed on producer-handlers.

Representatives of both producers and handlers urged that an administrative assessment be imposed on producer-handlers, They testified that since the market administrator must audit producer-handlers to verify their continued status as such, the cost of such audit should be borne by such producer-handlers rather than by fully and partially regulated handlers as at present. Both groups were unanimous, however, in their position that the market administrator should continue to audit producer-handlers regardless of whether the orders are amended to charge an administrative assessment on their milk.

Under each Federal order, including the present three Florida orders, the cost of order administration is assessed on handlers only with respect to that milk on which a monetary obligation to the pool is imposed under the terms of the order. The exemption of producer-handlers from administrative assessment is analogous to the exemption of fully regulated handlers from administrative assessment with respect to other source milk receipts disposed of for Class II uses, and partially regulated handlers on milk receipts other than those disposed of as Class I milk in the marketing area.

This is so even though such receipts require audit in determining the utilization of producer milk.

Under usual circumstances, the market administrator must perform varying degrees of audit on all of the operations of such handlers and, in some cases, to the same extent as that performed with respect to the fluid milk operations of the fully regulated handler. Nevertheless, the primary objective of audit and verification procedures under milk orders is to determine the minimum fiscal obligations for milk and those ancillary monetary obligations which are necessary to make the pricing, pooling, and payment provisions of orders fully effective. Appropriately, therefore, a handler's pro rata share of the cost of order administration basically is measured by or related to that milk on which a pool monetary obligation accrues.

The existing procedure for prorating the cost of administration of the orders here under consideration has tended to promote orderly marketing and equity among handlers in the regulated market and should be continued.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreements and the orders, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the tentative marketing agreements and the orders, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreements and the orders, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents, a "Marketing Agreement" regulating the handling of milk, and an "Order" amending the orders regulating the handling of milk in the aforesaid specified marketing areas, which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which is published with this decision.

Determination of producer approval and representative period. September 1970 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the orders, as amended and as hereby proposed to be amended, regulating the handling of milk in the aforesaid specified marketing areas, are approved or favored by producers, as defined under the terms of each of the orders, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the respective marketing areas.

Signed at Washington, D.C., on December 1, 1970.

RICHARD E. LYNG,
Assistant Secretary.

Order[1] Amending the Orders, Regulating the Handling of Milk in Certain Specified Marketing Areas.

FINDINGS AND DETERMINATIONS

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of each of the aforesaid orders and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid specified marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered that on and after the effective date hereof the handling of milk in each of the specified marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders, as amended, and as hereby amended, as follows:

The provisions of the proposed marketing agreements and order amending each of the specified orders contained in the recommended decision issued by the Deputy Administrator, Regulatory Programs, on November 6, 1970, and published in the FEDERAL REGISTER on November 11, 1970 (35 F.R. 17340; F.R. Doc. 70-15235), shall be and are the terms and provisions of this order, amending the orders, and are set forth in full herein:

PART 1006—MILK IN THE UPPER FLORIDA MARKETING AREA

In § 1006.51 paragraph (a) is changed to read as follows:

§ 1006.51 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $2.85.

* * * * *

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

PART 1012—MILK IN THE TAMPA BAY MARKETING AREA

In § 1012.51 paragraph (a) is changed to read as follows:

§ 1012.51 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $2.95.

* * * * *

PART 1013—MILK IN THE SOUTHEASTERN FLORIDA MARKETING AREA

In § 1013.51 paragraph (a) is changed to read as follows:

§ 1013.51 Class prices.

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the preceding month plus $3.15.

* * * * *

[F.R. Doc. 70-16485; Filed, Dec. 7, 1970; 8:51 a.m.]

[7 CFR Part 1136]

[Docket No. AO-309-A17]

MILK IN THE GREAT BASIN MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Notice is hereby given of a public hearing to be held at the Salt Lake City County Health Department Auditorium, 610 South Second East, Salt Lake City, UT, beginning at 10 a.m., on January 6, 1971, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Great Basin marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by Federated Dairy Farms, Inc.:

Proposal No. 1. Replace the first sentence in § 1136.11(a) with the following:

A fluid milk plant, except a producer-handler plant, from which during the month there is disposed of on routes fluid milk products, except filled milk, of not less than 55 percent in October through January, 45 percent in February, March, April, and September, and 40 percent in May through August of the fluid milk products approved by a duly constituted health authority for fluid consumption that are physically received at such plant or diverted therefrom as producer milk to a nonpool plant pursuant to § 1136.13, and there are disposed of on routes in the marketing area fluid milk products, except filled milk, of not less than 15 percent of the total fluid milk product disposition, except filled milk, from the plant on routes.

Proposal No. 2. Use Salt Lake City instead of Ogden and Provo as the basing point for determining location differentials pursuant to §§ 1136.53 and 1136.73.

Proposal No. 3. Amend § 1136.13(c)(3) to specify the conditions under which producer milk diverted by a cooperative shall be considered as a receipt at the plant from which diverted in determining its pool plant status.

Proposal No. 4. In § 1136.41(c)(5)(i), delete "(except diverted milk)."

Proposed by Beatrice Foods Company:

Proposal No. 5. Amend § 1136.50(a) to read:

The price for Class I milk shall be the basic formula price for the preceding month plus $1.52 and plus 20 cents.

Proposal No. 6. Amend § 1136.50(c) to read:

The Class III milk price shall be the basic formula price for the month.

Proposal No. 7. In § 1136.11(a) replace "* * * and there are disposed of on routes in the marketing area fluid milk products, except filled milk, equal to not less than 15 percent of the total fluid milk product disposition, except filled milk, from the plant on routes" with "* * * and there are disposed of on routes in the marketing area fluid milk products, except filled milk, equal to not less than 25 percent of the total fluid milk product disposition, except filled milk, from the plant on routes."

Proposed by Warren L. Odekirk:

Proposal No. 8. Amend § 1136.9(d) to read as follows:

(d) Any vendor (any person who does not operate a plant described in paragraph (a) of this section but who engages in the business of receiving fluid milk products for resale).

Proposed by the Dairy Division, Consumer and Marketing Service:

Proposal No. 9. Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, 1477 South 11th East, Salt Lake City, UT 84106, or from the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, D.C. 20250 or may be there inspected.

Signed at Washington, D.C., on December 2, 1970.

JOHN C. BLUM,
Deputy Administrator, Regulatory Programs.

[F.R. Doc. 70-16445; Filed, Dec. 7, 1970; 8:48 a.m.]

CIVIL AERONAUTICS BOARD

[14 CFR Parts 207, 208, 212, 214, 295, 373]

[Docket No. 22710]

STUDY GROUP CHARTERS BY DIRECT AIR CARRIERS AND STUDY GROUP CHARTERERS

Supplemental Notice of Proposed Rule Making

DECEMBER 3, 1970.

The Board, by circulation of notice of proposed rule making SPDR-20/EDR-191 dated November 3, 1970, and publication at 35 F.R. 17196, gave notice that it had under consideration (1) the promulgation of new Part 373 of the Board's Special Regulations to authorize, subject to the conditions provided therein, study group charters by study group charterers and (2) related amendments to Parts 207, 208, 212, 214, and 295 of its economic regulations. Interested persons were invited to participate by submission of twelve (12) copies of written data, views, or arguments pertaining thereto to the Docket Section of the Board on or before December 7, 1970, with responsive comments due on or before December 22, 1970. Subsequent to the issuance of the proposed rule counsel representing member carriers of the National Air Carrier Association requested an extension to December 14, 1970, of time for filing initial comments on the proposed rules and an extension to December 29, 1970, of the time to file reply comments, on the grounds that the complexity of the proposed revisions regarding bonding and study groups would require the gathering of extensive information from the member carriers and, accordingly, additional time is necessary to compile this information before submitting comments. In addition, counsel representing AIMS International Inc. (a study group charterer) requested an extension of the dates for filing comments to and including January 7, 1971, for initial comments and January 22, 1971, for reply comments.

The undersigned finds that good cause has been shown for the 1-week extension requested by counsel for NACA, but that any further extension is not warranted and would hamper the Board's intention of finalizing the proposed rules well in advance of the 1971 charter season.

Accordingly, pursuant to the authority delegated in § 385.20(d) of the Board's

organization regulations, the undersigned hereby extends the time for submitting initial comments to December 14, and reply comments to December 29, 1970.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

[SEAL] CHARLES A. HASKINS,
Acting Associate General Counsel, Rules and Rates.

[F.R. Doc. 70-16469; Filed, Dec. 7, 1970; 8:49 a.m.]

[14 CFR Parts 378, 378A]

[Docket No. 21967]

MODIFICATION OF SURETY BOND REQUIREMENTS FOR TOUR OPERATORS

Supplemental Notice of Proposed Rule Making

DECEMBER 3, 1970.

The Board, by circulation of notice of proposed rule making SPDR-19 dated November 3, 1970, and publication at 35 F.R. 17199, gave notice that it had under consideration proposed revisions to Part 378 of its Special Regulations so as to liberalize the surety bond requirements in the existing rules for inclusive tours by supplemental air carriers, certain foreign air carriers and tour operators. Interested persons were invited to participate by submission of twelve (12) copies of written data, views or arguments pertaining thereto to the Docket Section of the Board on or before December 7, 1970. Subsequent to the issuance of the proposed rule counsel representing member carriers of the National Air Carrier Association requested an extension to December 14, 1970, of time for filing initial comments on the proposed rules on the grounds that the complexity of the proposed revision regarding bonding will require the gathering of extensive information from the member carriers and, accordingly, additional time is required to compile this information before submitting comments. In addition, counsel representing AIMS International Inc. (a study group charterer) requested an extension of the dates for filing direct comments to and including January 7, 1971.

The undersigned finds that good cause has been shown for the 1-week extension requested by counsel for NACA, but that any further extension is not warranted and would hamper the Board's intension of finalizing the proposed rules well in advance of the 1971 charter season.

Accordingly, pursuant to the authority delegated in §385.20(d) of the organization regulations, the undersigned hereby extends the time for submitting initial comments to December 14, 1970.

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324)

[SEAL] CHARLES A. HASKINS,
Acting Associate General Counsel, Rules and Rates.

[F.R. Doc. 70-16470; Filed, Dec. 7, 1970; 8:49 a.m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

CERTAIN INERT INGREDIENTS IN PESTICIDE FORMULATIONS

Proposal To Exempt From Requirement of Tolerances

The Commissioner of Food and Drugs has received requests to exempt certain additional inert ingredients in pesticide formulations from tolerance requirements under the provisions of section 408 of the Federal Food, Drug, and Cosmetic Act. Based on a review of the history of use and available information on chemistry and toxicity of these substances, the Commissioner finds that these substances when used in pesticide formulations in accordance with good agricultural practice will not result in a hazard to the public health.

The U.S. Department of Agriculture reports that these substances are useful as adjuvants in pesticide formulations.

Therefore, pursuant to provisions of the act (sec. 408 (c), (e), 68 Stat. 512, 514; 21 U.S.C. 346a (c), (e)) and under authority delegated to him (21 CFR 2.120):

1. The Commissioner proposes that § 120.1001 be amended by alphabetically inserting new items in the tables in paragraphs (c) and (d) as follows:

§ 120.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
Acetic anhydride		Solvent, cosolvent.
Ammonium sulfate		Solid diluent, carrier.
Calcium phosphate		Do.
α-Cellulose		Do.
Citrus meal		Do.
Cod liver oil		Solvent, cosolvent.
Corn meal		Solid diluent, carrier.
Corn oil		Solvent, cosolvent.
Dimethylpolysiloxane (as defined in § 121.1099)		Defoaming agent.
Ferric sulfate		Solid diluent, carrier.
Fish meal		Do.
Fish oil		Solvent, cosolvent.
Hydroxypropyl methylcellulose		Thickener.
Lard		Solid diluent, carrier.
Magnesium oxide		Do.
Magnesium stearate		Surfactant.
Oatmeal		Solid diluent, carrier.
Oats		Do.
Palmitic acid		Diluent.
Polymerized sodium methacrylate		pH control.
Potassium chloride		Solid diluent, carrier.
Potassium phosphate		Buffer.
Propionic acid		Catalyst.
Propylene glycol alginate (as defined in § 121.1015)		Defoaming agent.
Sand		Solid diluent, carrier.
Sodium bicarbonate		Neutralizer.
Sodium chloride		Solid diluent, carrier.
Sorbitan fatty acid esters (fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids) and their poly(oxyethylene) derivatives; the poly(oxyethylene) content averages 16-20 moles.		Surfactants, related adjuvants of surfactants.
Soybean oil		Solvent, cosolvent.
Starch (potato and tapioca)		Solid diluent, carrier.
Stearic acid		Diluent.
Xanthan gum		Thickener.

(d) * * *

Inert ingredients	Limits	Uses
Acetonitrile		Solvent for blended emulsifiers in formulations used before crop emerges from soil.
Aluminum stearate		Defoamer.
Boric acid		Sequestrant.
Butyl stearate		Defoamer.
Chloroform		Solvent.
Corn		Attractant.
n-Decyl alcohol		Solvent, cosolvent.
Diacetone alcohol		Deactivator, solvent for formulations used before crop emerges from soil.
Diethanolamine		Stabilizer, inhibitor for formulations used before crop emerges from soil.
Diethylene glycol		Deactivator for formulations used before crop emerges from soil.
Epicholorohydrin	Not more than 1% of pesticide formulation.	Stabilizer for formulations used before crop emerges from soil.

Inert ingredients	Limits	Uses
Ethanol		Solvent, cosolvent.
Ethylene glycol		Antifreeze, deactivator for formulations used before crop emerges from soil.
Ethylene glycol monomethyl ether		Solvent for formulations used before crop emerges from soil.
2-Ethylhexanol		Cosolvent, defoamer, solvent for formulations used before crop emerges from soil.
Fluorapatite		Solid diluent, carrier.
Fumaric acid		Acidulant.
Gluconic acid (and sodium salt)		Sequestrant.
Hexamethylenetetramine		Stabilizer for carriers in solid pesticide formulations.
n-Hexyl alcohol		Solvent, cosolvent.
α-Hydro-*omega*-hydroxypoly (oxypropylene) (mol. wt. 2000).		Component of defoamers.
Hydroxypropyl cellulose		Thickener.
Isoamyl acetate	Not more than 0.5% of pesticide formulation.	Odor-masking agent.
Isobornyl acetate		Solvent.
Isophorone		Solvent for formulations used before crop emerges from soil.
Locust bean gum		Component of defoamers.
Magnesium sulfate		Solid diluent.
Mesityl oxide		Solvent for formulations used before crop emerges from soil.
Methyl *p*-hydroxybenzoate		Preservative for formulations.
Methyl oleate		Surfactant.
2-Methyl-2,4-pentanediol		Solvent for formulations used before crop emerges from soil.
Methyl violet 2B	Not more than 0.01% of pesticide formulation.	Dye for formulations used before crop emerges from soil.
Methylene blue		Dye for formulations used on cotton.
Monochlorobenzene		Solvent for formulations used before crop emerges from soil.
n-Octyl alcohol		Solvent, cosolvent.
α-Oleoyl-*omega*-(oleoyloxy) poly(oxyethylene) derived from *α*-hydro-*omega*-hydroxypoly (oxyethylene) (mol. wt. 600).		Component of defoamers.
Phenol		Solvent, cosolvent.
Polyethylene, oxidized (as defined in § 121.1142(a)).		Surfactants, related adjuvants of surfactants.
Polyvinyl acetate (as defined in § 121.1059).		Adhesive.
n-Propanol		Solvent for blended emulsifiers.
Propyl *p*-hydroxybenzoate		Preservative for formulations.
Propylene dichloride		Solvent for formulations used before crop emerges from soil.
Rosin, dark wood (as defined in § 121.2592).		Surfactants, related adjuvants of surfactants.
Rosin, gum		Do.
Rosin, tall oil		Do.
Soapbark (quillaja)		Dispersing agent, wetting agent.
Sodium fluoride	Not more than 0.25% of pesticide formulation.	Stabilizer, carrier for formulations used before crop emerges from soil.
Sodium metaborate		Sequestrant.
Sodium nitrate		Solid diluent.
Sodium nitrite	Not more than 3% of pesticide formulation.	Stabilizer, inhibiter.
Sorbic acid (and potassium salt)		Preservative for formulations.
Tannin		Dispersing agent.
N,N,N',N'-Tetrakis-(2-hydroxypropyl) ethylene-diamine.		Stabilizer for formulations used before crop emerges from soil.
Triethanolamine		Stabilizer, inhibiter for formulations used before crop emerges from soil.
Triethylene glycol		Deactivator.
Triethyl phosphate		Stabilizer for formulations used before crop emerges from soil.
Wheat		Attractant.
Wheat flour		Do.

2. To eliminate duplication and overlapping when the above substances are added to the table in § 120.1001(c), the Commissioner also proposes that the following item be deleted:

Sorbitan fatty acid esters (fatty acids limited to C_{12}, C_{14}, C_{16}, and C_{18} containing minor amounts of associated fatty acids) and their poly(oxyethylene) derivatives; the poly(oxyethylene) content averages 20 moles.

Any person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing any of the ingredients listed in this document may request, within 30 days from publication hereof in the FEDERAL REGISTER, that this proposal be referred to an advisory committee in accordance with section 408(e) of the act.

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: November 23, 1970.

R. E. DUGGAN,
Acting Associate Commissioner for Compliance.

[F.R. Doc. 70-16303; Filed, Dec. 7, 1970; 8:45 a.m.]

[21 CFR Part 121]

FOOD ADDITIVES

Eligibility of Substances for Classification as Generally Recognized as Safe in Food

The Food and Drug Administration is conducting a comprehensive study of the individual substances listed in § 121.101 *Substances that are generally recognized as safe* of the food additive regulations. This is often referred to as the GRAS (generally recognized as safe) list.

The purpose of this study is to evaluate by current standards the available safety information regarding each item on the list and to repromulgate each item in a new GRAS list or in a food additive regulation or in an interim food additive regulation pending completion of additional toxicity experiments. Conceivably, an item will not fit any of these categories because it cannot be judged as safe under its conditions of use. The study includes, but does not have to be limited to, the following:

1. For each item, a survey to determine the current use pattern and a review of available toxicity information. This is being conducted on a pilot scale for the Food and Drug Administration by the National Academy of Sciences-National Research Council.

2. A review of the available, pertinent scientific data in published material and in the files of the Food and Drug Administration.

3. Integration and evaluation of the information resulting from 1 and 2 above to determine whether or not the available safety data adequately support the current use patterns.

To provide guidance to interested persons, the Commissioner of Food and Drugs proposes that the criteria regarding establishing the subject items on the new GRAS list or in a food additive regulation be set forth by revising § 121.3 (the regulation heretofore describing the basis for what is or isn't GRAS) to read as follows. Items on the current GRAS list that these criteria would cause to be removed will be removed as soon as possible after this proposal is adopted and becomes effective.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-88, as amended; 21 U.S.C. 321(s), 348, 371(a)) and under authority delegated to the Commissioner (21 CFR 2.120), it is proposed that § 121.3 be revised to read as follows:

§ 121.3 Eligibility for classification as generally recognized as safe (GRAS).

(a) To ascertain that any substance is absolutely safe for human or animal consumption is impossible. This is particularly true in the case of substances intended for human consumption when animals are used to examine the effects of

test substances. "Safe" must be understood to connote that the Food and Drug Administration, after reviewing all available evidence, can conclude there is no significant risk of harm from using the substance as intended.

(b) Substances used as food or added directly or indirectly, intentionally or otherwise, to processed food may be classified as generally recognized as safe (GRAS). That status must be based on scientific data derived from published literature reporting on credible toxicological testing or on a reasoned judgment grounded in experience with common food use. The following criteria shall govern in specific instances:

(1) Substances considered as GRAS for which no promulgation is required:

(i) Any food of natural biological origin that has been widely consumed for its nutrient properties in the United States for at least 20 years prior to January 1, 1958, without detrimental effect when used under reasonably anticipated patterns of consumption.

(ii) Foods defined in subdivision (i) of this subparagraph that have been modified by conventional processing (such as cooking, curing, canning, freezing, dehydrating) in accordance with good manufacturing practice requirements effective when this revision of this § 121.3 is effective.

(2) Substances that may be considered as GRAS only after individual reviews of pertinent data; the Food and Drug Administration will promulgate in the FEDERAL REGISTER the names (and limitations, if any) of substances it affirms as GRAS, as follows:

(i) Foods defined in subparagraph (1) (i) of this paragraph that have been modified by processes proposed for introduction into commercial use after January 1, 1958.

(ii) Foods that have had a significant alteration of composition by breeding or selection.

(iii) Isolates, extracts, concentrates of extracts, or reaction products of substances considered as GRAS unless resulting directly from traditional processes as under subparagraph (1) (ii) of this paragraph.

(iv) Substances not of natural biological origin where evidence is offered that they are identical with a GRAS counterpart of natural biological origin, or where convincing evidence of their safety is otherwise presented.

(3) Substances which are not eligible for GRAS status, hence requiring food additive regulations:

(i) Substances intended for human consumption that have no history of safe use under the conditions proposed.

(ii) Substances intended for human consumption for which total intake limitations must be imposed to assure safe use.

(c) Any substance used in food must be of food grade quality. The Food and Drug Administration regards the applicable specifications in the current edition of "Food Chemicals Codex" as establishing food grade unless the Food and Drug Administration promulgates other specifications in the FEDERAL REGISTER.

(d) If the Food and Drug Administration has not affirmed a given substance as GRAS, such affirmation may be sought by submitting to the Food and Drug Administration a request therefor containing all relevant usage and safety data.

(e) Substances listed as GRAS may have to be reclassified either because of the criteria established in this section or because of questions raised by new knowledge or investigations. Frequently the first results of a new investigation are not conclusive of potential harm but may serve only to establish that the substance in question can no longer be considered as GRAS. Newly reported information must be carefully evaluated along with the total available knowledge to determine whether or not there has been significant increase in the risk of harm from using the substance as intended. No status change will be made until the Food and Drug Administration has had an opportunity to evaluate the new findings.

(f) If after a responsible and substantial question of safety has been raised regarding a substance previously listed as GRAS the main weight of the scientific evidence still indicates safety (at least within certain limits), an interim food additive regulation will be proposed. This will permit further scientific investigations to define the conditions of safe use for a food additive regulation of indefinite duration.

Interested persons may, within 30 days after publication hereof in the FEDERAL REGISTER, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 6-62, 5600 Fishers Lane, Rockville, MD 20852, written comments (preferably in quintuplicate) regarding this proposal. Comments may be accompanied by a memorandum or brief in support thereof.

Dated: November 23, 1970.

CHARLES C. EDWARDS,
Commissioner of Food and Drugs.

[F.R. Doc. 70-16462; Filed, Dec. 7, 1970; 8:51 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 23]

[Docket No. 19073]

INTERNATIONAL FIXED PUBLIC RADIOCOMMUNICATIONS SERVICES

Order Granting Extension of Time

1. On November 27, 1970, ITT World Communications Inc. (ITT Worldcom), requested an extension of time until December 15, 1970 and February 1, 1971 in which to file comments and replies, respectively, in Docket 19073.

2. We find that good cause has been shown for granting the requested extension of time.

3. Accordingly, pursuant to § 0.303(c) of the Commission's rules pertaining to Delegations of Authority, ITT Worldcom's request is granted, and the time for filing Comments and Replies in Docket 19073 is extended to December 15, 1970 and February 1, 1971, respectively.

Adopted: November 30, 1970.

Released: December 2, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] A. C. ROSEMAN,
Chief, International and Satellite Communications Division.

[F.R. Doc. 70-16476; Filed, Dec. 7, 1970; 8:50 a.m.]

[47 CFR Part 25]

ESTABLISHMENT OF DOMESTIC COMMUNICATION-SATELLITE FACILITIES BY NON-GOVERNMENTAL ENTITIES

[Docket No. 16495; FCC 70-1238]

Extension of Time for Filing Applications and Comments

Memorandum opinion and order. 1. The Commission has before it: (a) A "Motion for Extension of Time to File Applications" for a domestic satellite system filed by RCA Global Communications, Inc., and RCA Alaska Communications, Inc. (RCA), on November 19, 1970; (b) a "Petition for Reconsideration or Extension of Time" filed by the Communications Satellite Corp. (Com Sat), on November 20, 1970; (c) a "Petition for Modification" filed by The Western Union Telegraph Co. (Western Union) on November 19, 1970; (d) a "Motion for Extension of Time to File Applications" filed by Western Telecommunications, Inc. (Western), on November 23, 1970; and (e) "Comments in Support of ComSat Petition for Reconsideration or Extension of Time," filed by GT&E Service Corp. on November 23, 1970.

2. RCA seeks an extension of time until December 30, 1970, on the ground that the David Sarnoff Laboratories of RCA Corp. are studying the possible use of frequencies above 10 GHz and expect to have the results of this study available about December 15, 1970 for analysis by RCA engineers. According to RCA, the "current state of development of earth station and satellite equipment utilizing frequencies above 10 gigahertz, while reasonably advanced and certainly worthy of consideration for inclusion in the advanced domestic satellite system the applicants are planning, requires more study than can be expected in the time before December 1, 1970." RCA further states that the additional time would enable it to make a more thorough investigation of frequency usage in coordinating frequencies in the 4 and 6 GHz bands, and to explore the possibility of joint arrangements with other entities for the establishment of a system. RCA undertakes to make the results of its studies available to the Commission when it applies for a 4 and 6 GHz system on December 30, 1970. In the event that it decides that the use of the higher

frequencies is feasible technically, economically and within a reasonable time, RCA may request a further extension of time to file an additional application utilizing such frequencies.

3. Western seeks an extension until February 28, 1971, to file applications for part or all of the facilities required for a domestic communications satellite system. It states that it is planning as a minimum to file for receive/only earth stations within its operating area, some of which may have capacity for occasional transmissions. Western is also seriously considering the possibility of filing for "full-fledged" transmit/receive stations in the 4 and 6 GHz or higher bands to operate in conjunction with one or more satellites or satellite systems authorized to others, and may decide to apply for a complete system of its own. Western states that in many respects its position is similar to the network Affiliates Associations, and that knowledge of the position of the television networks is of major importance to its applications.

4. ComSat requests the Commission to reconsider its Order of November 6, 1970 (FCC 70–1198) granting the MCI carriers an extension of time until February 28, 1971 to file alternative applications for a 4 and 6 GHz system and for a system placing primary reliance of the higher frequencies. In the alternative, ComSat seeks the establishment of a new cutoff date for all applications by all parties, either February 28, 1971 or some earlier date. Otherwise, ComSat asserts, inequities will result since some applicants will have the benefit of additional time to prepare applications and will have an opportunity to make adversary use of data contained in applications filed by others in compliance with the present December 1, 1970 cutoff for systems in the 4 and 6 GHz band to be considered in conjunction with the application of Western Union.

5. Western Union requests the Commission to modify its order of November 6, 1970 herein so as to require all parties, including MCI, who intend to file applications in the 4 and 6 GHz bands to do so no later than December 15, 1970. It states that it first sought to apply for a domestic satellite system 4 years ago, and submitted an application pursuant to the Commission's Report and Order of March 24, 1970 (22 FCC 2d 86), which was accepted for filing on September 3, 1970 (FCC 70–953). Western Union further states that the December 1, 1970 cutoff date for applications in the 4 and 6 GHz band is reasonable, and that the February 28, 1971 date for MCI inequitably favors one applicant over others and will unduly delay consideration of applications filed on December 1, 1970.

6. Both in the Report and Order and in the Further Notice of Proposed Rule Making issued on September 25, 1970 (25 FCC 2d 718), our purpose was to encourage the maximum number of concrete proposals which we could examine individually and collectively as a basis for determining a policy as to how the satellite technology may best be employed to further the public interest in an expanded and new communication service. We do not view our procedure in the context ordinarily applied to competitive propositions to be considered in a comparative hearing. We established the initial cutoff date of December 1, 1970 as a needed schedule by which potential respondents could be guided. The cutoff date was not designed to limit us to considering only those proposals filed within that period or to restrict applicants to the confines of their proposals as originally tendered. In the Further Notice of September 25, 1970, we stated that applicants desiring to apply for the higher frequencies could request an extension of time (25 FCC 2d at 721, fn. 1). Moreover, in the Report and Order we recognized that, in "an undertaking of this nature, applicants may not be in a position to apply now for all of the facilities ultimately contemplated, or to specify some of the design and operational details of the facilities requested for initial operation, and may desire to modify their initial specific proposals in light of subsequent developments" (22 FCC 2d at 99). As there stated (ibid.), "considerable flexibility must be afforded." Our goal is to facilitate the filing of multiple applications, as well as to elicit full and concrete information to assist us in a decision as to what type of system or systems would best serve the public interest, rather than to impose stringent procedural confines.

7. Although it was originally contemplated that requests for extensions would be occasioned principally by the need for additional time to explore any problems involved in proposing higher frequencies, we have recognized that there are special situations (e.g., the television networks and the Affiliates Associations). There may be other instances of hardship or inequity in meeting the present deadline. We would have preferred to consider individual requests for extension setting forth the circumstances of the particular case, since they are more informative as to the progress of the applicant and may discourage unnecessary delays. However, in light of all the foregoing and the allegations in the pleadings, we have decided to grant a blanket extension until March 1, 1971 for the filing of applications for systems in the 4 and 6 GHz bands and for those proposing the use of the higher frequencies. The times for filing by the television networks, the Affiliates Associations, and Western, and for filing comments on the proposed rulemaking will be adjusted commensurately.

8. At the same time, we desire to avoid any unnecessary delay in a resolution of this proceeding and to commence the lengthy task of processing applications as promptly as possible. Accordingly, we strongly urge applicants who do not need the additional time to submit their applications as soon as they are ready. Since the applications may be modified or supplemented at any time prior to a further Commission order establishing such deadline for amendments as may be necessary to permit final Commission action, we see no advantage to any applicant in delaying the submission of an application until others have filed. Moreover, all applicants, as well as other interested persons, will have an opportunity to comment on all applications as well as on the issues in the rule making.[1]

Accordingly, it is ordered, That the time for filing all applications for domestic communications satellite systems in the 4 and 6 GHz bands or utilizing the higher frequencies to be considered with the application of Western Union is extended to March 1, 1971; *Provided, however,* That the ABC, CBS, and NBC television networks shall submit a statement as to their intent on or before March 15, 1971; the ABC, CBS, and NBC network Affiliates Associations may file an application for a prototype receive/only earth station on or before March 30, 1971; and Western Tele-Communications, Inc., may file applications for earth stations to be operated with the systems proposed by other applicants on or before March 30, 1971.

It is further ordered, That comments on the applications and on the proposed rule making may be filed on or before March 30, 1971 and reply comments on or before April 26, 1971.

It is further ordered, That the requests in the various pleadings listed in paragraph 1 above are granted to the extent reflected herein and are otherwise denied.

Adopted: November 25, 1970.

Released: December 2, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[2]
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 70–16482; Filed, Dec. 7, 1970; 8:50 a.m.]

[47 CFR Parts 73, 74]

[Docket No. 18110, etc.; FCC 70–1239]

COMMUNITY ANTENNA TELEVISION SYSTEMS

Diversification of Control; Extension of Time for Filing Comments

In the matters of amendment of §§ 73.35, 73.240 and 73.636 of the Commission's rules relating to multiple ownership of standard, FM, and television broadcast stations, Docket No. 18110; amendment of Part 74, Subpart K, of the Commission's rules and regulations relative to Community Antenna Television Systems; and inquiry into the development of communications technology and services to formulate regulatory policy and rulemaking and/or legislative proposals, Docket No. 18397; and amendment of Part 74, Subpart K, of the Commission's rules and regulations relative to diversification of control of community Antenna Television Systems; and

[1] Applicants desiring to do so may defer, or supplement, their initial comments on the applications and on the issues in the rule making until the Mar. 30, 1971 filing date for other interested persons.

[2] Commissioner Bartley absent.

inquiry with respect thereto to formulate regulatory policy and rulemaking and/or legislative proposals, Docket No. 18891.

Memorandum opinion and order. 1. On July 30, 1970, the American Newspaper Publishers Association filed a letter expressing its disagreement with the Commission's belief (asserted in paragraph 17 of the Second Report and Order in Docket No. 18397) that it has the authority to adopt rules governing cross-ownership of CATV systems with newspapers; and indicating its impression that such a question was in an inquiry rather than rule-making posture in Docket No. 18891 (35 F.R. 11042, 16056, 16686). On August 12, 1970, the Commission's Cable Television Bureau replied, in part as follows:

> As is made clear from the Notice of Proposed Rule Making and of Inquiry in Docket 18891 the Commission contemplates that at the conclusion of this proceeding rules may be adopted which limit the ownership of CATV systems by newspapers. As required by the Administrative Procedure Act the notice in Docket 18891 includes reference to the legal authority under which action is proposed and either the terms of the proposed rules or a description of the subjects and issues involved.

2. On September 2, 1970, ANPA filed a "Petition for Clarification of Newspaper Ownership Issue and Related Procedures, or for Review, and for Other Relief," in which it disputes this ruling; asks the Commission "to clarify whether the issue pertaining to the ownership of CATV systems is in the rule making or inquiry phase" of the proceeding in Docket No. 18891; and asks:

> A. That the issue with respect to the ownership or operation of CATV systems by newspapers be either dismissed from the Docket No. 18891 proceeding or merged in the inquiry part of the proceeding by amendment of Paragraph 13 thereof;
>
> B. That, in any event, the original and reply comment phases on the CATV newspaper ownership matters be deferred until 3 months after completion of the comment phase in Docket No. 18110; and
>
> C. That such other relief be granted as is deemed appropriate.

3. In support of these requests, ANPA argues, inter alia: (a) that the Commission lacks authority to disqualify newspaper publishers from ownership or operation of local CATV systems; (b) that the Commission's Notice of Proposed Rule Making and of Inquiry in Docket 18891 does not contain sufficient information to permit adoption of rules regarding that issue without a further notice of proposed rule making; (c) that the reference to newspapers in the Notice of Proposed Rule Making in Docket No. 18397 suggests that the question of newspaper-CATV system cross-ownership is in an "inquiry" phase; (d) that the newspaper-CATV system cross-ownership issue in Docket No. 18891 and the newspaper-broadcast station issue in Docket No. 18110 are closely interrelated and the Commission has decided to consider them together; (e) that the major submissions by interested parties with respect to the newspaper ownership issue will be made in Docket No. 18110; (f) that almost none of the various studies now in process for Docket No. 18110 can be completed by the return date in Docket No. 18891; [1] and (g) that, since the Commission intends to consider both broadcasting and CATV newspaper ownership matters contemporaneously, there is no reason for an early deadline in the comment phase of the Docket No. 18891 proceeding with respect to newspaper ownership matters.

4. The Second Report and Order in Docket No. 18397 adequately states the jurisdictional basis for promulgation of newspaper-CATV system cross-ownership rules. And the contention that the Docket No. 18891 Notice contains insufficient information to serve as a notice of proposed rule making is rejected in view of section 4(a) (3) of the Administrative Procedure Act, which provides that:

> General notice of proposed rule making shall * * * include * * * (3) either the terms and substance of the proposed rule or a description of the subjects and issues involved.

5. To dispose of the contention that prior Commission documents create an impression that the cross-ownership matter is in inquiry phase, the Commission herewith reaffirms that the newspaper-CATV system matter is in a rule-making phase. This, together with the action taken herein regarding the closing dates for filing of comments and replies in Docket No. 18891, moots any possible ambiguity and avoids unfairness or inconvenience resulting therefrom.

6. With respect to the other assertion, we are persuaded that the public interest will be served by an extension of the closing dates in Docket No. 18891 for receipt of comments and replies regarding newspaper-CATV system cross-ownerships to January 15, and February 17, 1971, respectively.

7. *It is ordered,* That the closing dates for filing of comments and replies in Docket No. 18891 concerning cross-ownership and/or operation of CATV systems and newspapers are extended to January 15, 1971, and February 17, 1971, respectively, approximately the same as the dates in Docket 18110.

8. *It is further ordered,* That the American Newspaper Publishers Association's "Petition for Clarification of Newspaper Ownership Issue and Related Procedures, or for Review, and for Other Relief" filed September 2, 1970, is granted, to the extent indicated in paragraphs 5 to 7, above, but otherwise is denied.

Adopted: November 25, 1970.

Released: December 3, 1970.

FEDERAL COMMUNICATIONS COMMISSION, [2]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70-16483; Filed, Dec. 7, 1970; 8:50 a.m.]

[1] "[T]he minimum period considered necessary by ANPA to make an adequate response * * * in Docket 18110 * * *" (ANPA petition, par. 5).

[2] Commissioner Bartley absent; Commissioner Wells concurring in the result.

[47 CFR Part 73]

[Docket No. 19075]

TELEVISION BROADCAST STATIONS

Table of Assignments, Nogales and Tucson, Ariz.; Order Extending Time for Filing Comments and Reply Comments

In the matter of amendment of § 73.606, Table of Assignments, Television Broadcast Stations. (Nogales and Tucson, Ariz.), Docket No. 19075, RM-1645.

1. This proceeding was begun by notice of proposed rule making (FCC 70-1164) adopted October 28, 1970, released November 2, 1970, and published in the FEDERAL REGISTER on November 6, 1970, 35 F.R. 17121. The dates for filing comments and reply comments are presently December 7, 1970, and December 17, 1970, respectively.

2. On November 30, 1970, I.B.C., a limited partnership, licensee of Station KZAZ-TV, Nogales, Ariz., filed a request to extend the time for filing comments to and including January 7, 1971. I.B.C. states that extensive preparation is required to properly comment on the Commission's notice of proposed rule making. Counsel for all parties who have previously expressed an interest in this matter have consented to the extension of time requested herein.

3. We are of the view that the additional time is warranted and would serve the public interest. *Accordingly, it is ordered,* That the time for filing comments and reply comments in Docket 19075 is extended to and including January 7, 1971, and January 18, 1971, respectively.

4. This action is taken pursuant to authority found in sections 4(i), 5(d) (1), and 303(r) of the Communications Act of 1934, as amended, and § 0.281(d) (8) of the Commission's rules.

Adopted: December 2, 1970.

Released: December 3, 1970.

[SEAL] FRANCIS R. WALSH, *Chief, Broadcast Bureau.*

[F.R. Doc. 70-16477; Filed, Dec. 7, 1970; 8:50 a.m.]

FEDERAL POWER COMMISSION

[18 CFR Parts 101, 104, 201, 204]

[Docket No. R-246]

UNIFORM SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND FOR NATURAL GAS COMPANIES

Disposition of Balance in Accumulated Deferred Tax Accounts Attributable to Property Retired Prior to the Expiration of Its Estimated Useful Life; Order Terminating Proposed Rule Making

DECEMBER 2, 1970.

The Commission, by notice issued August 27, 1963 (28 F.R. 9648, Aug. 31,

1963), proposed to amend certain accounts in the Uniform Systems of Accounts for electric and natural gas pipeline companies. The proposed rulemaking was intended to provide for the treatment of certain balances of deferred taxes accumulated with respect to plant which had been sold, exchanged, abandoned or otherwise retired from service and the manner of disposition of such accumulated balances.

Comments were received from a number of interested parties, mostly opposed to the rulemaking. Because of the Commission's decisions on liberalized depreciation in Order No. 404 (issued May 15, 1970, 43 FPC 740), Statement of Policy and Order No. 404–A (issued July 9, 1970, 44 FPC _____), Order Denying Rehearing (Docket No. R–387), Opinion No. 578 (issued June 3, 1970, 43 FPC 824), in the Texas Gas Transmission Corp. case, Docket No. RP69–41, and Opinion No. 581 (issued July 15, 1970, 44 FPC _____), in the Tennessee Gas Transmission Co. case, Docket No. CP64–218, and the present impact of the Tax Act of 1962, as applied today outmoding, to a degree, that originally proposed in R–246, further consideration of these comments by the Commission is now necessary. The rule-making proceeding in Docket No. R–246 should, accordingly, be terminated.

The Commission finds:

(1) The termination of the proposed rulemaking in Docket No. R–246 is appropriate and necessary for carrying out the provisions of the Federal Power Act and the Natural Gas Act.

(2) Compliance with the effective date provisions of section 553 of title 5 of the United States Code is unnecessary.

The Commission, acting pursuant to authority granted by the Federal Power Act, as amended, particularly sections 301, 304, and 309 thereof (49 Stat. 854, 855, 858; 16 U.S.C. 825, 825c, 825h), and by the Natural Gas Act, as amended particularly sections 8, 10, and 16 thereof (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717o) orders:

(A) Effective upon issuance of this order, the proposed rulemaking in Docket No. R–246 is terminated.

(B) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

[SEAL] GORDON M. GRANT,
Secretary.

[F.R. Doc. 70–16432; Filed, Dec. 7, 1970; 8:47 a.m.]

[18 CFR Parts 101, 104, 201, 204]

[Docket No. R–409]

UNIFORM SYSTEMS OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND FOR NATURAL GAS COMPANIES

Disposition of Balance in Accumulated Deferred Tax Accounts Attributable to Property Retired Prior to the Expiration of Its Estimated Useful Life

DECEMBER 2, 1970.

Pursuant to 5 U.S.C. 553, the Commission gives notice it proposes to amend, effective for the reporting year 1971:

A. Certain accounts in the Uniform System of Accounts for Class A and Class B Public Utilities and Licensees, prescribed by Part 101, Chapter I, Title 18, CFR.

B. Certain accounts in the Uniform System of Accounts for Class A and Class B Natural Gas Companies, prescribed by Part 201, Chapter I, Title 18, CFR.

C. Certain accounts in the Uniform System of Accounts for class C Public Utilities and Licensees, prescribed by Part 104, Chapter I, Title 18, CFR.

D. Certain accounts in the Uniform System of Accounts for Class C Natural Gas Companies, prescribed by Part 204, Chapter I, Title 18, CFR.

The amendments herein proposed deal with balances which may remain in the Accumulated Deferred Tax Accounts due to the disposal of related property prior to its useful service life. The issuance of the Commission's Order No. 404 (Docket R–387), Statement of Policy, issued May 15, 1970 (35 F.R. 7963, May 23, 1970); Order No. 404–A (Docket R–387) Order Denying Rehearing, issued July 9, 1970 (35 F.R. 11313, July 15, 1970); Opinion No. 578, issued June 3, 1970 (43 FPC 824), to Texas Gas Transmission Corp., Docket Nos. RP69–41 and RP70–14; Opinion 581 issued July 15, 1970 (44 FPC _____), to Tennessee Gas Transmission Co. (Docket CP64–218, 44 FPC _____); and the present day impact of the Tax Act of 1962 make a new policy on the disposition of these balances desirable.

Basically, the new policy is necessary to clarify accounting treatment to be afforded balances in the deferred income tax accounts upon the sale, exchange, abandonment, or otherwise retirement of property from service relating to such property. The present instructions are now considered inadequate as they prevent a return to customers of funds they supplied during the deferral periods. The Uniform Systems of Accounts (for Class A, B, and C, gas and electric) presently provide that these amounts shall be credited to Account 411, Income Taxes Deferred in Prior Years—Credit, in the year the property is disposed of. Unless a rate determination is made during the year the amounts are credited to Account 411, the effect of such accounting treatment is to increase income without any benefit accruing to the customers.

Upon establishment of the accounting treatment for these remaining balances long-term capital gains of corporations were generally being taxed at a 25 percent rate. Thereafter, the Tax Act of 1962 (effective Jan. 1, 1962), provided that depreciation taken after the effective date of the Act (1–1–62) would be subtracted from the long-term gain on the sale of corporate property before the 25 percent long-term capital gain rate could be applied. The remainder of the amount (or the amount of depreciation taken since Jan. 1, 1962) would be taxed at the same rate as current net income, (at present 48 percent). Since the 1962 Tax Act change, the relative long-term capital gains at a 25 percent rate for depreciable property have just about disappeared from the corporate picture. This means, therefore, that any large amounts related to the remaining property now in the deferred tax Accounts 281, 282, and 283 would be about depleted after application of the full corporate tax rate.

Ultimately, none of the aforementioned deferred tax accounts include provisions for the disposal of deferred tax amounts relating to property which may be transferred to wholly owned subsidiaries or to subsidiaries which are not not wholly owned. The problem relating to transfers to wholly owned facilities was decided by the Commission in Opinion No. 581 (issued July 15, 1970, 44 FPC _____) in the Tennessee Gas Transmission Co. case, Docket No. CP64–218 (44 FPC _____). Provisions to provide for these instances are also being proposed herein.

The staff believes this entire matter can be disposed of by changing the language in the last sentence of paragraph E of Accounts 281 and 282 and the last sentence of paragraph D of Account 283, as mentioned in specific detail hereinafter, so as to encompass present day requirements.

The proposed amendments to the Commission's Uniform System of Accounts under the Federal Power Act would be issued under authority granted the Federal Power Commission by the Federal Power Act, particularly sections 301, 304, and 309 (49 Stat. 854, 855, 856, 858, 859; 16 U.S.C. 825, 825c, 825h).

The proposed amendments to the Commission's Uniform System of Accounts under the Natural Gas Act would be issued under the authority granted the Federal Power Commission by the Natural Gas Act, particularly sections 8, 10 and 16 (52 Stat. 825, 826, 830 (1938); 15 U.S.C. 717g, 717i, 717o).

Any interested person may submit to the Federal Power Commission, Washington, D.C. 20426, not later than January 18, 1971, data, views, comments, or suggestions, in writing, concerning the proposed amendments to the Uniform Systems of Accounts. An original and 14 conformed copies should be filed with the Secretary of the Commission. Submissions to the Commission should indicate the name, title, address and telephone number of the person to whom communications concerning the proposal should be addressed, and whether the person filing them requests a conference at the Federal Power Commission to discuss the proposed revisions to the Uniform Systems of Accounts. The Commission will consider all such written submissions before acting on the matters herein proposed.

A. The following are proposed amendments to the Uniform System of Accounts for Class A and Class B, Public Utilities and Licensees in Part 101, Chapter I, Title 18 of the Code of Federal Regulations:

1. In the text of Balance Sheet Accounts, revise the last sentence of paragraph E of accounts "281, Accumulated Deferred Income Taxes—Accelerated Amortization," and "282, Accumulated Deferred Income Taxes—Liberalized Depreciation," and the last sentence of

paragraph D of account "283, Accumulated Deferred Income Taxes—Other." The revised portion of accounts 281, 282 and 283 will read:

Balance Sheet Accounts

* * * * *

LIABILITIES AND OTHER CREDITS

* * * * *

11. ACCUMULATED DEFERRED INCOME TAXES

* * * * *

281 Accumulated deferred income taxes—Accelerated amortization.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance; *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

282 Accumulated deferred income taxes—Liberalized depreciation.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance; *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

283 Accumulated deferred income taxes—Other.

* * * * *

D. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange, or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

B. The following are proposed amendments to the Uniform System of Accounts for Class C, Public Utilities and Licensees in Part 104, Chapter I, Title 18 of the Code of Federal Regulations:

1. In the text of Balance Sheet Accounts, revise the last sentence of paragraph E of accounts "281, Accumulated Deferred Income Taxes—Accelerated Amortization," and "282, Accumulated Deferred Income Taxes—Liberalized Depreciation," and the last sentence of paragraph D of account "283, Accumulated Deferred Income Taxes—Other." The revised portion of accounts 281, 282 and 283 will read:

Balance Sheet Accounts

* * * * *

LIABILITIES AND OTHER CREDITS

* * * * *

11. ACCUMULATED DEFERRED INCOME TAXES

* * * * *

281 Accumulated deferred income taxes—Accelerated amortization.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

282 Accumulated deferred income taxes—Liberalized depreciation.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

283 Accumulated deferred income taxes—Other.

* * * * *

D. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

* * * * *

C. The following are proposed amendments to the Uniform System of Accounts for Class A and Class B, Natural Gas Companies in Part 201, Chapter I, Title 18 of the Code of Federal Regulations:

1. In the text of Balance Sheet Accounts, revise the last sentence of paragraph E of accounts "281, Accumulated Deferred Income Taxes—Accelerated Amortization," and "282, Accumulated Deferred Income Taxes—Liberalized Depreciation," and the last sentence of paragraph D of account "283, Accumulated Deferred Income Taxes—Other." The revised portion of accounts 281, 282 and 283 will read:

Balance Sheet Accounts

* * * * *

LIABILITIES AND OTHER CREDITS

* * * * *

11. ACCUMULATED DEFERRED INCOME TAXES

* * * * *

281 Accumulated deferred income taxes—Accelerated amortization.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in

this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

282 Accumulated deferred income taxes—Liberalized depreciation.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance; *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

283 Accumulated deferred income taxes—Other.

* * * * *

D. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this acocunt shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

* * * * *

D. The following are proposed amendments to the Uniform System of Accounts for Class C, Natural Gas Companies in Part 204, Chapter I, Title 18 of the Code of Federal Regulations:

1. In the text of Balance Sheet Accounts, revise the last sentence of paragraph E of accounts "231, Accumulated Deferred Income Taxes—Accelerated Amortization," and "282, Accumulated Deferred Income Taxes—Liberalized Depreciation," and the last sentence of paragraph D of account "283, Accumulated Deferred Income Taxes—Other." The revised portion of accounts 231, 282, and 283 will read:

Balance Sheet Accounts

* * * * *

LIABILITIES AND OTHER CREDITS

* * * * *

11. Accumulated Deferred Income Taxes

* * * * *

231 Accumulated deferred income taxes—Accelerated amortization.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

282 Accumulated deferred income taxes—Liberalized depreciation.

* * * * *

E. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

283 Accumulated deferred income taxes—Other.

* * * * *

D. * * * Upon the sale, exchange, abandonment or taxable transfer of plant on which there is a related balance herein, this account shall be charged and account 411, Income Taxes Deferred in Prior Years—Credit, shall be credited with the amount of such balance: *Provided, however,* That if the related income tax attributable to such sale, exchange or abandonment is significantly less than such related balance, the Commission may otherwise direct or authorize how the residuals shall be handled. Upon transfers of plant to a wholly owned subsidiary the related balance in this account shall also be transferred. If transfers of plant are made to other than a wholly owned subsidiary and such transfer does not involve a tax transaction, the accounting shall be as authorized or directed by the Commission.

The Secretary shall cause prompt publication of this notice to be made in the Federal Register.

By direction of the Commission.

Gordon M. Grant,
Secretary.

[F.R. Doc. 70-16431; Filed, Dec. 7, 1970; 8:47 a.m.]

[18 CFR Part 154]

[Docket No. R-493]

PURCHASED GAS COST ADJUSTMENT PROVISIONS IN NATURAL GAS PIPELINE COMPANIES' FPC GAS TARIFF

Notice of Proposed Rule Making; Correction

November 20, 1970.

In the notice of proposed rulemaking, Issued October 22, 1970 and published in the Federal Register October 29, 1970, 35 F.R. 16743, Add "date" after "effective".

Kenneth F. Plumb,
Acting Secretary.

[F.R. Doc. 70-16440; Filed, Dec. 7, 1970; 8:48 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[A-5432]

ARIZONA

Notice of Classification of Public Lands for Multiple-Use Management

DECEMBER 1, 1970.

1. Pursuant to the Act of September 19, 1964 (43 U.S.C. 1411–18) and to the regulations in 43 CFR Parts 2400, 2460, and 2430, the public lands described below are hereby classified for Multiple-Use Management. Publication of this notice has the effect of segregating all the described lands from appropriation under the agricultural land laws (43 U.S.C. Parts 7 and 9, 25 U.S.C. 334), and from sale under section 2455 of the Revised Statutes (43 U.S.C. 1171). All of the described lands shall remain open to all other applicable forms of appropriation, including the mining and mineral leasing laws. As used in this order, the term "public lands" means any lands (1) withdrawn or reserved by Executive Order No. 6910 of November 26, 1934, as amended, or (2) within a grazing district established pursuant to the Act of June 28, 1934 (48 Stat. 1269), as amended, which are not otherwise withdrawn or reserved for a Federal use or purpose.

2. The notice of proposed classification of these lands was published September 24, 1970 in 35 F.R. 14853. A public hearing was held October 22, 1970 in Globe, Ariz., and the proposal was widely publicized. All comments received endorsed the proposal and the classification is made as proposed.

3. The lands involved are in the Mescal Mountain area of Gila County and are described as follows:

GILA AND SALT RIVER MERIDIAN, ARIZONA

T. 2 S., R. 15 E.,
Sec. 20, lot 1, S½NE¼, N½SE¼, and SE¼SE¼;
Sec. 29, lot 5, lots 9 to 13, inclusive, lot 38, E½NE¼, N½SE¼, and portions of N½SW¼, NW¼, and W½NE¼;
Sec. 31, NE¼, and N½SE¼;
Sec. 33;
Sec. 34, SW¼.
T. 2 S., R. 16 E.,
Sec. 31, lots 1 to 4, inclusive, and W½.
T. 3 S., R. 14 E.,
Sec. 24, lot 2, SE¼SW¼, and SW¼SE¼;
Sec. 25, all that portion in Gila County.
T. 3 S., R. 15 E.,
Sec. 4;
Sec. 5;
Sec. 6, lots 6 and 7, E½SW¼, and SE¼;
Sec. 7, lots 1 to 4, inclusive, E½W½, W½E½, E½SE¼, and SE¼NE¼;
Sec. 8, S½, S½NW¼, NW¼NW¼, SW¼NE¼, and NE¼NE¼;
Sec. 9, E½, E½W½, and SW¼NW¼;
Sec. 10, S½SW¼;
Sec. 11, S½ and W½NW¼;
Sec. 12, S½;
Sec. 13, N½, and S½S½;
Sec. 14, NE¼, N½NW¼, SE¼NW¼, S½SE¼, SE¼SW¼, and NW¼SW¼;
Sec. 18;
Sec. 19, lots 1, 2, and 3, E½NW¼, NE¼SW¼, and E½;
Sec. 22, S½ and S½N½;
Secs. 23, 24, and 25;
Sec. 26, E½ and NW¼;
Sec. 28;
Sec. 29, S½ and SE¼NW¼;
Sec. 30, lots 1 to 4, inclusive, SE¼NW¼, E½SW¼, and E½;
Sec. 31, lots 1 to 4, inclusive, E½W½, W½E½, E½SE¼, and SE¼NE¼.
T. 3 S., R. 16 E. (unsurveyed),
Secs. 6, 7, 13, 14, 15, 17, and 18, outside San Carlos Indian Reservation;
Secs. 19 to 31, inclusive, and secs. 33 to 36, inclusive.
T. 3 S., R. 17 E.,
Sec. 13, lots 1 to 4, inclusive, and S½S½;
Sec. 14, lots 1 to 4, inclusive, and S½S½;
Sec. 15, lots 1 to 4, inclusive, and S½S½;
Sec. 17, lots 1 to 4, inclusive, and S½S½;
Sec. 18, lots 1 to 5, inclusive, and S½SE¼;
Sec. 19, lots 1 to 4, inclusive, SE¼SW¼, SE¼, and E½NE¼;
Secs. 20, 21, 22, and 23;
Sec. 24, that portion in Gila County;
Sec. 25, that portion in Gila County;
Sec. 26, that portion in Gila County;
Sec. 27, that portion in Gila County;
Sec. 28, that portion in Gila County;
Sec. 29, that portion in Gila County;
Sec. 30;
Sec. 31, that portion in Gila County;
Sec. 34, that portion in Gila County.
T. 3 S., R. 18 E.,
Sec. 17, that portion of the W½SW¼ outside the San Carlos Indian Reservation;
Sec. 18, that portion of the S½ outside the San Carlos Indian Reservation;
Sec. 19, that portion of the W½W½ outside the San Carlos Indian Reservation;
Sec. 20, that portion of the N½ outside the San Carlos Indian Reservation.
T. 4 S., R. 14 E.,
Sec. 1, E½NE¼ (that portion in Gila County).
T. 4 S., R. 15 E.,
Sec. 1, lots 1 to 4, inclusive, S½N½, and N½SE¼;
Sec. 3, S½;
Sec. 4;
Sec. 5, lots 1, 3, and 4, S½N½, and S½;
Sec. 6, lots 1 to 5, inclusive, lot 7 (that portion in Gila County), SE¼NW¼, E½SW¼, S½NE¼, and SE¼;
Sec. 7, E½NW¼ (that portion in Gila County) NE¼, and SE¼SE¼;
Sec. 8, N½, S½SW¼, SW¼SE¼, and N½SE¼;
Sec. 9, N½ and N½SW¼;
Sec. 10, N½, N½S½, SE¼SE¼, and SW¼SW¼;
Sec. 11, W½W½, E½NW¼, and E½;
Sec. 12, W½W½, S½NE¼, SE¼, and NE¼NW¼;
Sec. 13, E½, SW¼, and W½NW¼;
Secs. 14 and 15;
Sec. 16, W½, W½E½, E½SE¼, and NE¼NE¼;
Sec. 17, all that portion in Gila County;
Sec. 20, that portion in Gila County;
Secs. 21 to 27, inclusive;
Sec. 28, all that portion in Gila County;
Sec. 29, E½NE¼ (that portion in Gila County);
Sec. 33, E½NW¼ and E½ (that portion in Gila County);
Sec. 34, N½, and N½S½;
Sec. 35.
T. 4 S., R. 16 E.,
Secs. 1 and 2, all that portion in Gila County (unsurveyed);
Secs. 3 to 6, inclusive (unsurveyed);
Sec. 7, NW¼NE¼ and SE¼SE¼;
Sec. 8, S½SW¼;
Sec. 10 (unsurveyed);
Secs. 11 and 14, all that portion in Gila County (unsurveyed);
Sec. 15, that portion of the E½SE¼, and the SW¼SE¼ in Gila County;
Sec. 17, except Mineral Survey 4443;
Sec. 18 (unsurveyed);
Secs. 19 and 20, except patented mining claims (unsurveyed);
Secs. 21 and 28, except patented mining claims (that portion in Gila County);
Secs. 29, 30, and 31, except patented mining claims.
T. 5 S., R. 15 E.,
Sec. 1, lots 1 to 7, inclusive, SW¼NE¼, S½NW¼, SW¼, and W½SE¼;
Sec. 2, lots 1 to 5, inclusive, S½NE¼, and SE¼NW¼;
Sec. 3, lots 1 to 4, inclusive, and all that portion in Gila County;
Sec. 4, that portion in Gila County;
Sec. 11, N½NE¼;
Sec. 12, lots 1 and 2, W½NE¼, E½NW¼, NW¼NW¼, and NE¼SW¼.
T. 5 S., R. 16 E.,
Sec. 5, all that portion in Gila County;
Sec. 6;
Sec. 7, N½NW¼, that portion of W½NE¼ in Gila County.

The land aggregates 61,100 acres of public land.

4. These public lands are shown on maps on file and available for inspection in the Safford District Office, Bureau of Land Management, 1707 West Thatcher Boulevard, Post Office Box 786, Safford, AZ 85546, and the Land Office, Bureau of Land Management, 3204 Federal Building, Phoenix, AZ 85025.

5. For a period of 30 days, interested parties may submit comments to the Secretary of the Interior, LLM 320, Washington, D.C. 20240.

GLENDON E. COLLINS,
Acting State Director.

[F.R. Doc. 70-16419; Filed, Dec. 7, 1970; 8:46 a.m.]

[Group 463]

ARIZONA

Notice of Filing of Plat of Survey

DECEMBER 1, 1970.

1. Plat of Survey of the lands described below will be officially filed in the Land Office, Phoenix, Ariz., effective at 10 a.m. on January 6, 1971:

GILA AND SALT RIVER MERIDIAN

T. 7 S., R. 20 E.,
Sec. 3, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 10, lots 1 to 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, and SE¼;
Sec. 11, lots 1 to 4, inclusive, E½W½, and E½;
Sec. 12;
Sec. 13, lots 1 to 4, inclusive, N½, and N½S½;
Sec. 14, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼;
Sec. 15, lots 1 to 7, inclusive, NE¼NE¼, N½NW¼, and E½SE¼;
Sec. 19, lots 1 to 4, inclusive, E½W½, and SE¼;
Sec. 29, lots 1 to 7, inclusive, W½NW¼, SW¼SW¼, and S½SE¼;
Sec. 30, lots 1 to 7, inclusive, NE¼, E½NW¼, SE¼SW¼, and S½SE¼;
Sec. 31, lots 1 to 7, inclusive, NE¼, E½NW¼, NE¼SW¼, and N½SE¼.

The area described aggregates 6,381.72 acres of public land.

2. The soil, in the above-described lands, is mostly sandy and rocky loam. Vegetation consists of bunchgrass, mesquite, cat claw, oakbrush, and cacti. Widely scattered juniper timber is found in the higher elevations.

3. The lands described in paragraph 1 are opened to petition, application and selection, as outlined in paragraph 4 below. No application for these lands will be allowed under the nonmineral public land laws, unless or until the lands have been classified. Any application that is filed will be considered on its merits. The lands will not be subject to occupancy or disposition until they have been classified.

4. Subject to any existing valid rights and the requirements of applicable law, the lands described in paragraph 1 hereof, are hereby opened to filing of petition-application and selection in accordance with the following:

a. Applications and selections under the nonmineral public land laws, and offers under the mineral leasing laws may be presented to the manager mentioned below, beginning on the date of this order. Such applications, selections, and offers will be considered as filed on the hour and respective dates shown for the various classes enumerated in the following paragraphs.

(1) Applications by persons having prior existing valid settlement rights, preference rights conferred by existing laws, or equitable claims subject to allowance and confirmation will be adjudicated on the facts presented in support of each claim or right. All applications presented by persons other than those referred to in this paragraph will be subject to the applications and claims mentioned in this paragraph.

(2) All valid applications and selections under the nonmineral public land laws presented prior to 10 a.m. on January 6, 1971, will be considered as simultaneously filed at that hour. Rights under such applications and selections and offers filed after that hour will be governed by the time of filing.

5. Persons claiming preferance rights based upon settlement, statutory preference, or equitable claims must enclose properly executed statements in support of their applications, setting forth all facts relevant to their claims. Detailed rules and regulations governing applications which may be filed pursuant to this notice can be found in Title 43 of the Code of Federal Regulations.

GLENDON E. COLLINS,
Manager.

[F.R. Doc. 70-16420; Filed, Dec. 7, 1970; 8:46 a.m.]

[A 5968]

ARIZONA

Notice of Proposed Withdrawal and Reservation of Lands

The Forest Service, United States Department of Agriculture, has filed an application, Serial No. A 5968, for withdrawal of lands from mineral location and entry under the General Mining Laws, subject to existing valid claims.

The lands are located within the Tonto National Forest and the withdrawal is needed to protect the lands from disruption by mining activity.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, 3022 Federal Building, Phoenix, AZ 85025.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party.

The lands involved in the application are described as follows:

GILA AND SALT RIVER MERIDIAN, ARIZONA

CLINE CABIN WILDLIFE ENCLOSURE

T. 4 N., R. 9 E. (unsurveyed),
Sec. 3, NW¼NE¼;

PAYSON ADMINISTRATIVE SITE

T. 10 N., R. 10 E.,
Sec. 2, lots 3 and 4, S½NW¼ and SW¼.

The area described aggregates 359.22 acres, more or less.

Dated: November 23, 1970.

JOE T. FALLINI,
State Director.

[F.R. Doc. 70-16421; Filed, Dec. 7, 1970; 8:46 a.m.]

[New Mexico 12720]

NEW MEXICO

Notice of Proposed Withdrawal and Reservation of Lands

DECEMBER 1, 1970.

The Forest Service, U.S. Department of Agriculture, has filed application Serial No. New Mexico 12720, for the withdrawal of the land described below from location and entry under the U.S. mining laws. The applicant desires the lands for use of the Gila Bird Habitat and Research Natural Area, an area essential for the protection of over 200 species of birds, of which six are classified as "rare and endangered." The area provides forage, water and the necessary protection which is so essential to the perpetuation of the rare bird population.

For a period of 30 days from the date of publication of this notice, all persons who wish to submit comments, suggestions or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management, Department of the Interior, Land Office Manager, Post Office Box 1449, Santa Fe, NM 87501.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the land for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the land and its resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the land will be withdrawn as requested by the applicant agency.

The determination of the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The land involved in the application is:

NEW MEXICO PRINCIPAL MERIDIAN

GILA NATIONAL FOREST

Gila River Rare & Endangered Bird Habitat & Natural Area

T. 17 S., R. 17 W.,
Sec. 9, N½NE¼, SE¼NE¼, SE¼SW¼, N½SE¼, and SW¼SE¼;
Sec. 10, W½NW¼;
Sec. 16, W½E½ and W½;
Sec. 17, NE¼SE¼;
Sec. 21, W½NW¼, SW¼, and W½SE¼;
Sec. 27, W½W½;
Sec. 28, E½ and N½NW¼;
Sec. 32, E½E½;
Sec. 33, N½ and W½SW¼.

The area described aggregates 2,320 acres in Grant County.

MICHAEL T. SOLAN,
Land Office Manager.

[F.R. Doc. 70-16422; Filed, Dec. 7, 1970; 8:46 a.m.]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

PUERTO RICO CANE SUGAR AREA

Notice of Hearing on Proportionate Shares for 1971–72 Crop

Notice is hereby given that the Administrator, Agricultural Stabilization and Conservation Service acting pursuant to the Sugar Act of 1948, as amended, is preparing to conduct a public hearing to receive views and recommendations from all interested persons on the possible need for establishing proportionate shares for the 1971–72 sugarcane crop in Puerto Rico.

In accordance with the provisions of paragraph (1), subsection (b) of section 302 of the Sugar Act of 1948, as amended, the Administrator must determine for each crop year whether the production of sugar from any crop of sugarcane in Puerto Rico will, in the absence of proportionate shares, be greater than the quantity needed to enable the area to meet its quota and provide a normal carryover inventory, as estimated by the Administrator for such area for the calendar year during which the larger part of the sugar from such crop normally would be marketed. Such determination may be made only after due notice and opportunity for an informal public hearing.

The hearing on this matter will be conducted in Room 4711, South Building, U.S. Department of Agriculture, Washington, D.C., beginning at 10 a.m. on December 22, 1970.

Views and recommendations are desired on all phases of the proportionate share program. They may be submitted in writing, in triplicate, at the hearing, or may be mailed to the Director, Sugar Division, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture, Washington, D.C. 20250, postmarked not later than January 7, 1971. Interested persons will be given the opportunity at the hearing to appear and submit orally data, views and arguments in regard to the establishment of proportionate shares.

Restrictions on the marketing of sugarcane in Puerto Rico have not been in effect since the 1955–56 crop. The area has not marketed all of its mainland basic sugar quota in recent years. Prospects for the 1970–71 crop indicate that production will again fall short of the area's mainland basic quota.

All written submission made pursuant to this notice will be made available for public inspection at such times and places in a manner convenient to the public business (7 CFR 1.27(b)).

Signed at Washington, D.C., on: December 2, 1970.

KENNETH E. FRICK,
Administrator, Agricultural Stabilization and Conservation Service.

[F.R. Doc. 70-16484; Filed, Dec. 7, 1970; 8:51 a.m.]

DEPARTMENT OF COMMERCE

Maritime Administration

PROSPECTIVE SUBSIDY APPLICANTS

Filing of Statement

Section 804(a) of the Merchant Marine Act, 1936, as amended by the Merchant Marine Act, 1970 (Section 24 of Public Law 91-469) provides that it shall be unlawful for any contractor under title VI of the Act, or any holding company, subsidiary, affiliate, or associate of such contractor or such charterer, or any officer, director, agent, or executive thereof, directly or indirectly to own, charter, operate, or act as agent or broker for any foreign-flag vessel which competes with any American-flag service determined by the Secretary of Commerce to be essential as provided in section 211 of the Act.

Section 804(c) of the Act provides that section 804(a) shall not apply to certain activities of such a contractor or any holding company, subsidiary, affiliate, or associate of such contractor or any officer, director, agent or executive thereof, who was not such a contractor on April 15, 1970, until April 15, 1990. These activities are:

(1) "the continued ownership, charter or operation of a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk which was owned, chartered or operated by such contractor, or those in the foregoing specified relationship to him on April 15, 1970," and

(2) "the continued acting as agent or broker for a vessel described in [(1) above] which is owned, chartered, or operated by such a contractor, or those in the foregoing specified relationship to him, and for which such contractor, or those in the foregoing specified relationship to him, were acting as agent or broker on April 15, 1970."

In addition, section 804(a) shall not apply to such a contractor who continues to act as agent or broker for a foreign-flag vessel engaged in the carriage of dry or liquid cargoes in bulk, other than one described above, for which the contractor, or those in the foregoing specified relationship to him, were acting as agent or broker for him on April 15, 1970, until April 15, 1972.

Section 804(d) of the Act provides:

> No contractor under Title VI, whether he shall have become such a contractor before or after the date of enactment of this section, shall avail himself of the provisions of subsection (c) of this section unless not later than 90 days after the enactment of this section there shall have been filed with the Secretary of Commerce a full and complete statement, satisfactory in form and substance to the Secretary, of all foreign-flag vessels which he, or those in the foregoing specified relationship to him, directly or indirectly owned, chartered, acted as agent or broker for, or operated on April 15, 1970.

Notice is hereby given that the statement required by section 804(d) must be filed with the Assistant Administrator for Maritime Aids, Maritime Administration, U.S. Department of Commerce, Washington, D.C. 20235, not later than January 19, 1971.

This statement should contain the following information:

(1) For each foreign-flag vessel owned, chartered or operated by the prospective applicant:

(a) Full identification of vessel, including name, flag of registry, home port, general type of vessel (tanker, dry bulk carrier, etc.) and deadweight, gross and net tonnage;

(b) Whether vessel is owned, chartered, or operated by prospective applicant;

(c) If owned, chartered, or operated by a holding company, subsidiary, affiliate, or associate of the prospective applicant, or by any officer, director, agent, or executive thereof, directly or indirectly, the name of the company or person owning, chartering, or operating said foreign-flag vessel, and the relationship of such company or person to the prospective applicant;

(d) Owner of vessel (if other than (b) or (c) above);

(e) Operator of vessel (if other than (b) or (c) above);

(f) A statement as to whether the vessel is engaged in the carriage of dry or liquid cargoes in bulk; and

(g) A statement as to whether agency or brokerage services are performed for any of the foreign-flag vessels which are owned, chartered, or operated by the prospective applicant or by a related company or person as described in (c) above. If so, the prospective applicant shall state the name and address of the person or company performing such agency or brokerage services.

(2) For each foreign-flag vessel for which agency or brokerage services are performed other than one described in 1.(g) above:

(a) Full identification of each vessel, including name, flag of registry, home port, general type of vessel (tanker, dry bulk carrier, etc.) and deadweight, gross and net tonnage;

(b) Whether agency services are provided directly by the prospective applicant or by any holding company, subsidiary, affiliate, or associate of the prospective applicant or by any officer, director, agent, or executive thereof. If such services are performed by other than the prospective applicant, the name of the company or person performing such services and the relationship of said company or person to the prospective applicant;

(c) Owner of the vessel;

(d) Operator of the vessel; and

(e) A statement as to whether the vessel is engaged in the carriage of dry or liquid cargoes in bulk.

By order of the Maritime Subsidy Board/Maritime Administration.

Dated: December 2, 1970.

JAMES S. DAWSON, Jr.,
Secretary.

[F.R. Doc. 70-16415; Filed, Dec. 7, 1970; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 22690]

CARIBBEAN-ATLANTIC AIRLINES, INC. AND EASTERN AIR LINES, INC. ACQUISITION AGREEMENT

Notice of Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on December 17, 1970, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Ross I. Newmann.

Requests for information and evidence, proposed procedural dates, and proposed statements of issues, should be filed with the Examiner, Bureau Counsel, and the applicants on or before December 11, 1970.

Dated at Washington, D.C., December 3, 1970.

[SEAL] RALPH L. WISER,
Acting Chief Examiner.

[F.R. Doc. 70-16466; Filed, Dec. 7, 1970; 8:49 a.m.]

[Docket No. 22736]

COMPANIA MEXICANA DE AVIACION, S.A. (CMA)

Notice of Prehearing Conference and Hearing

Notice is hereby given that a prehearing conference on the above-entitled application is assigned to be held on December 16, 1970, at 10 a.m., e.s.t., in Room 726, Universal Building, 1825 Connecticut Avenue NW., Washington, DC, before Examiner Joseph L. Fitzmaurice.

Notice is also given that the hearing may be held immediately following conclusion of the prehearing conference unless a person objects or shows reason for further postponement on or before December 10, 1970.

Dated at Washington, D.C., December 2, 1970.

[SEAL] RALPH L. WISER,
Acting Chief Examiner.

[F.R. Doc. 70-16467; Filed, Dec. 7, 1970; 8:49 a.m.]

[Docket Nos. 21866, 22822; Order 70-12-8]

BRANIFF AIRWAYS, INC.

Order Regarding Reduction of Coach Fares

Adopted by Civil Aeronautics Board at its office in Washington, D.C., on the 3d day of December 1970.

By tariff revisions[1] marked to become effective December 7, 1970, Braniff Airways, Inc. (Braniff), proposes to reduce its normal coach fares to the level of competitive night coach fares from New Orleans to Tampa and Miami, and from Tampa to Miami. Present normal coach fares would continue to apply in the reverse direction, except when round-trip transportation is purchased.

In justification of its proposal, Braniff alleges that, effective October 26, 1970, National added night coach service in these markets (Flight 28) departing New Orleans at 8:20 a.m., and Tampa at 11 a.m., in each case 10 minutes prior to Braniff's day coach flight. Braniff states that due to the prime departure times of these flights it must reduce its fares to remain competitive, and that it is reducing the fares southbound only so as to not dilute revenues any more than necessary.

Eastern Air Lines, Inc. (Eastern), has submitted a motion requesting the Board to accept and consider a late-filed complaint which requests investigation and suspension of Braniff's proposal. The motion does not establish good cause for Eastern's untimely filing and, accordingly, the complaint will not be entertained insofar as it relates to suspension. These fares are already under investigation in the Domestic Passenger-Fare Investigation, Docket 21866.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204, 403, 404, and 1002 thereof,

It is ordered, That:

1. The motion of Eastern Air Lines, Inc., in Docket 22822 is denied and the complaint dismissed; and

2. A copy of this order will be filed with aforesaid tariffs and be served on Braniff Airways, Inc., and Eastern Air Lines, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[F.R. Doc. 70-16468; Filed, Dec. 7, 1970; 8:49 a.m.]

[1] Revisions to Airline Tariff Publishers, Inc., Agent, Tariff CAB No. 136.

CIVIL SERVICE COMMISSION

CUSTOMS SECURITY OFFICER, NEW YORK STANDARD METROPOLITAN AND NEWARK STANDARD METROPOLITAN STATISTICAL AREA

Notice of Establishment of Minimum Rate and Rate Ranges and Manpower Shortage Finding

Under authority of 5 U.S.C. 5303 and Executive Order 11073, the Civil Service Commission has established special minimum salary rates and rate ranges as follows:

GS-1899 CUSTOMS SECURITY OFFICER

Geographic Coverage: (1) New York, N.Y. SMSA (New York City; Nassau, Rockland, Suffolk, and Westchester Counties) (2) Newark, N.J. SMSA (Essex, Morris, and Union Counties).

Effective Date: First day of the first pay period beginning on or after November 1, 1970.[1]

([1] NOTE: The special salary rates authorized herein will be automatically terminated effective the beginning of the first pay period which commences on or after September 1, 1971, unless a specific determination is made to take other appropriate action.)

PER ANNUM RATES

Grade	1	2	3	4	5	6	7	8	9	10
GS-4	$7,218	$7,413	$7,608	$7,803	$7,998	$8,193	$8,388	$8,583	$8,778	$8,973
GS-5	8,074	8,292	8,510	8,728	8,946	9,164	9,382	9,600	9,818	10,036
GS-7	9,988	10,258	10,528	10,798	11,068	11,338	11,608	11,878	12,148	12,418
GS-9	10,889	10,888	11,187	11,486	11,785	12,184	12,513	12,842	13,171	13,500

All new employees in the specified occupation level will be hired at the new minimum rates.

As of the effective date, all agencies will process a pay adjustment to increase the pay of employees on the rolls in the affected occupational levels. An employee who immediately prior to the effective date was receiving basic compensation at one of the statutory rates shall receive basic compensation at the corresponding numbered rate authorized by this notice on or after such date. The pay adjustment will not be considered an equivalent increase within the meaning of 5 U.S.C. 5335.

Under the provisions of 5 U.S.C 5723, agencies may pay the travel and transportation expenses to first post of duty.

This authorization is nationwide for this occupation and is subject to automatic termination on September 1, 1971, under the same conditions as the special rate authorization under 5 U.S.C. 5303.

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] JAMES C. SPRY,
Executive Assistant to the Commissioners.

[F.R. Doc. 70-16490; Filed, Dec. 7, 1970; 8:51 a.m.]

ATOMIC ENERGY COMMISSION

[Docket No. 50-368]

ARKANSAS POWER AND LIGHT CO.

Notice of Availability of Applicant's Environmental Report and Request for Comments From State and Local Agencies

Pursuant to the National Environmental Policy Act of 1969 and the Atomic

Energy Commission's regulations in Appendix D to 10 CFR Part 50, notice is hereby given that the Arkansas Power and Light Co. has submitted an environmental report, dated September 10, 1970, which discussess environmental considerations relating to the proposed construction of the Arkansas Nuclear One, Unit 2 facility. A copy of this report has been placed in the Commission's Public Document Room, 1717 H Street NW., Washington, DC, and in the Office of the Acting County Judge of Pope County, Pope County Courthouse, Russellville, Ark. The Arkansas Power and Light Co. has applied for a construction permit for the Arkansas Nuclear One, Unit 2 plant to be located on its site adjacent to the Company's Unit 1 facility now under construction on a peninsula in Dardanelle Reservoir on the Arkansas River in Pope County, Ark., approximately 2 miles southeast of the village of London, Ark.

The Commission hereby requests comments on the proposed action and on the report from State and local agencies of any affected State (with respect to matters within their jurisdiction), which are authorized to develop and enforce environmental standards. If the Commission is not provided with comments by any State or local agency within 60 days of the publication of this notice in the FEDERAL REGISTER, the Commission will presume that the agency has no comments to make.

Copies of the Arkansas Power and Light Co.'s report, dated September 10, 1970, and comments thereon of Federal agencies (whose comments are being separately requested by the Commission) will be supplied to such State and local agencies upon request addressed to the Director, Division of Reactor Licensing, U.S. Atomic Energy Commission, Washington, D.C. 20545.

Dated at Bethesda, Md., this 25th day of November 1970.

For the Atomic Energy Commission.

PETER A. MORRIS,
Director,
Division of Reactor Licensing.

[F.R. Doc. 70-16405; Filed, Dec. 7, 1970; 8:45 a.m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19031]

USE OF COMMUNICATION FACILITIES IN U.S. BY FOREIGN ENTITIES

Order Granting Extension of Time

1. On November 30, 1970, the Commission received a request from RCA Global Communications, Inc. (RCA Globcom), that the time in which to submit comments in Docket 19031 be extended until December 9, 1970.

2. We find that good cause has been shown for the requested extension.

3. Accordingly, pursuant to section 303(c) of the Commission's rules pertaining to Delegations of Authority, RCA Globcom's request is granted, and the time in which to submit comments in Docket 19031 is extended until December 9, 1970. The date for filing Replies in said Docket remains December 31, 1970.

Adopted: November 30, 1970.

Released: December 2, 1970.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] A. C. ROSEMAN,
Chief, International and Satellite Communications Division.

[F.R. Doc. 70-16475; Filed, Dec. 7, 1970; 8:50 a.m.]

[Dockets Nos. 18251, 18252; FCC 70R-415]

LOUIS VANDER PLATE AND RADIO NEW JERSEY

Memorandum Opinion and Order Enlarging Issues

In regard applications of Louis Vander Plate, Franklin, N.J., Docket No. 18251, File No. BP-16837; Radio New Jersey, Hackettstown, N.J., Docket No. 18252, File No. BP-16987; for construction permits.

1. By Order, FCC 67-731, released July 22, 1968, the Commission designated for hearing the mutually exclusive applications of Louis Vander Plate and Radio New Jersey.[1] Hearing sessions have since been held on the originally designated issues and on those added by the Review Board on interlocutory request. The record remains open, however, pending ultimate Commission action in its inquiry concerning community survey showings by applicants.[2] Now before the Review Board is a petition to enlarge issues, filed September 30, 1970, by the Broadcast Bureau.[3] Petitioner requests the addition of an issue against Vander Plate based on violations of the Commission's rules allegedly discovered by Commission field investigators in the operation of the applicant's FM facility.

2. In its petition, the Bureau submits that a September 5, 1968 field inspection of Vander Plate's licensed FM station, WLVP-FM, revealed numerous operational violations and culminated in the Commission's imposing a forfeiture therefor in the amount of $500. The forfeiture was decreed by the Commission in a memorandum opinion and order, FCC 70-227, released March 2, 1970, after Vander Plate had received both a notice of violation and a notice of apparent liability.[4] However, continues the Bureau, on July 15, 1970, another Commission field inspection was conducted of Station WLVP-FM. As a result of that inspection, submits petitioner, the Commission, on July 20, 1970, issued an Official Notice of Violation which detailed 46 infringements of the Commission's rules and regulations. Significantly, urges the Bureau, the Commission's 1970 notice enumerated 22 more violations than had its 1968 counterpart, and each of the violations for which Vander Plate had previously paid a forfeiture and promised corrective action remained unrectified.[5] Consequently, reasons the Bureau, the inability or unwillingness of Vander Plate to operate his FM facility in compliance with Commission regulations poses a substantial question as to whether he should be granted the license for an AM facility. Petitioner cites The Court House Broadcasting Co. 21 FCC 2d 792, 18 RR 2d 616 (1970), and DuPage County Broadcasting Co. 21 FCC 2d 395, 18 RR 2d 321 (1970) for the general proposition that an applicant's past record of station maintenance and supervision is relevant to a public interest determination in subsequent licensing proceedings. Finally, the Bureau urges that good cause for the late filing of its petition exists by reason of Vander Plate's delayed response to the Commission's most recent notice of violation. The Bureau alleges the impropriety of having moved for enlargement before all of Vander Plate's replies had been submitted to the Commission.[6] The Bureau buttresses its claims to timeliness within the good cause requirements of the rules by reference to United Television Company, Inc. 23 FCC 2d 493, 19 RR 2d 86 (1970).

3. In opposition, Vander Plate does not dispute the allegations that the violations took place, but pleads certain mitigating circumstances. Vander Plate recites, for instance, the various difficulties in staffing and operating a solitary FM facility in a rural area. Moreover, while Vander Plate concedes a substantial number of alleged violations, he discounts many of them as technical infractions or as infringements of no consequence. Additionally, advances respondent, the cited violations have resulted in harm to no one and were compiled in a harsh and unfair manner by the Commission inspector. Vander Plate suggests that the inspector determinedly ferreted

[1] Five other applications consolidated for hearing by the Commisson at the same time have been subsequently dismissed or granted. See Order, 16 FCC 2d 842, 15 RR 2d 907 (1969); and Order, FCC 70R-46, adopted Feb. 12, 1970, 21 FCC 2d 672. Only the applications of Louis Vander Plate and Radio New Jersey remain in this proceeding.

[2] See public notice, FCC 70-312, released Mar. 26, 1970, 22 FCC 2d 421.

[3] Also before the Board are: (a) opposition, filed Oct. 23, 1970, by Vander Plate; (b) comments, filed Oct. 23, 1970, by Radio New Jersey; and (c) reply, filed Oct. 28, 1970, by the Broadcast Bureau.

[4] The Bureau indicates that Vander Plate paid the forfeiture on Apr. 17, 1970.

[5] As was true in 1968, asserts the Bureau, Louis Vander Plate's 1970 dereliotions involve mainly technical and operational matters. Noncompliance is alleged, e.g., as to parts of §§ 73.281, 73.282, 73.265, 73.254, 73.317, 73.961, and 73.265 of the Rules.

[6] Petitioner asserts that it was notified on Sept. 28, 1970, that Vander Plate's reply to the last violation notice had been received by the Commission.

out each discrepancy regardless of its seriousness or importance. Applicant pleads affirmatively that Louis Vander Plate is constantly "on the job"; lives at the transmitter site; and, in spite of the discrepancies discovered by the Commission's inspector in the operation of the station, has never knowingly or willfully violated Commission rules. Furthermore, advances applicant, a new and experienced general manager has been hired for Station WLVP–FM, and he began his duties there on September 1, 1970. Vander Plate notes that the new general manager has instituted corrective procedures and urges that the technical as well as the nontechnical operating deficiencies of the Station are being quickly and completely remedied.[7]

4. In view of the Broadcast Bureau's basically uncontroverted allegations and in light of the precedent contained in The Court House Broadcasting Company, supra; DuPage County Broadcasting Company, supra; and United Television Company, Inc., supra, the Review Board is constrained to add the requested issue.[8] We agree with the contention of the Broadcast Bureau, in its reply pleading, that Vander Plate's recitation of mitigating circumstances is properly directed to resolution of the requested issues at hearing, and is not an adequate basis for denial of the request. Thus, as stated by the Review Board in United:

> Even assuming that [the applicant's] explanations and rationalizations are adequate to dispose of all the claimed violations, the fact still remains that the licensee has conceded that several operational violations did occur. It has been recognized by the Commission that the failure to operate in the public interest occurs in many cases because of the failure of the licensee to properly supervise and maintain control of his station. 23 FCC 2d at 493, 19 RR 2d at 92.

Furthermore, the Commission in DuPage noted plainly that past conduct on the part of the operator of an existing facility bore substantially on resolution of the public interest determination to be made when the operator was also applying for a new facility. Notably too, the Commission in DuPage added issues similar to the one requested here. The Review Board will therefore grant the relief requested by the Bureau.

5. *Accordingly it is ordered,* That the petition to enlarge issues, filed September 30, 1970, by the Broadcast Bureau is granted; and

6. *It is further ordered,* That the issues in this proceeding are enlarged by addition of the following issues:

(a) To determine all of the facts and circumstances concerning the violations of the Commission's rules and regulations committed by Louis Vander Plate for which Official Notices of Violations were issued for Station WLVP–FM on September 26, 1968 and July 20, 1970;

(b) To determine, in light of the facts developed under issue (a), whether Louis Vander Plate may reasonably be expected to exercise diligently that degree of licensee responsibility required of the operator of a broadcast facility, and whether the public interest would be served by permitting Louis Vander Plate to acquire an additional broadcast facility.

7. *It is further ordered,* That the burden of proceeding with the introduction of evidence under the issues added herein shall be on the Broadcast Bureau, and the burden of proof shall be on Louis Vander Plate.

Adopted: November 30, 1970.

Released: December 2, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[9]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–16479; Filed, Dec. 7, 1970; 8:50 a.m.]

[Docket No. 19058 etc.; FCC 70–1236]

NIAGARA COMMUNICATIONS, INC., ET AL.

Memorandum Opinion and Order Designating Application for Hearing

In regard applications of Niagara Communications, Inc., Savannah, Ga., Docket No. 19058, File No. 723–M–L–69; Marine Telephone Co., Inc., Savannah, Ga., Docket No. 19059, File No. 804–M–P–99; Answering Network of Georgia, Inc., Savannah, Ga., Docket No. 19060, File No. 901–M–L–80; Barry Barr, Savannah, Ga., Docket No. 19098, File No. 118–M–L–90; for a public coast Class III–B radio station at Savannah, Ga.

1. On October 21, 1970, we designated for comparative hearings in Dockets 19058, 19059, and 19060, applications by Niagara Communications, Inc., Marine Telephone Co., Inc., and Answering Network of Georgia, Inc., for a Public Coast Class III–B radio station at Savannah, Ga. We were unable to grant the applications without a hearing because there was no showing of need for more than one station under circumstances where we normally authorize only one station of this class to operate, and because two of the applications were mutually exclusive since the applicants proposed to use the same working frequency which would have resulted in mutually destructive electrical interference.

2. An additional application has been received for a like station at Savannah, from Barry Barr who proposes to operate on the frequency 161.9 MHz. This application had been filed but was not processed at the time we designated for hearing the three above-mentioned applications. 161.9 MHz is the same working frequency requested by Marine Telephone and Niagara Communications. The application of Barr, therefore, is mutually exclusive with those three applications. The application of Barr contains no showing of need for more than one station of this class at Savannah.

3. In view of the foregoing, the application of Barr must also be designated for comparative hearing with the other three applications in these dockets to determine which application should be granted.

4. *Accordingly, it is ordered,* That the above-entitled application of Barry Barr is designated for comparative hearing, with the other three applications in these Dockets at a time and place to be specified in a subsequent order on the issues contained in paragraphs 5a (1) through (7) and c of our designation order adopted October 21 and released October 28, 1970, and Barry Barr is hereby made a party to these proceedings.

5. *It is further ordered,* That the burden of proceeding with the introduction of evidence on Issue a is also placed on Barry Barr insofar as the respective items pertain to him.

6. *It is further ordered,* That the guide and reference source for preparing certain exhibits as specified in paragraph 7 of the designation order remains unchanged and is equally applicable to Barry Barr.

7. *It is further ordered,* That to avail himself of an opportunity to be heard, Barry Barr, pursuant to § 1.221(c) of the rules, shall, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this order.

8. *It is further ordered,* That the Secretary, when mailing a copy of this order to Barry Barr, and all other applicants in these dockets, will also mail to Barry Barr a copy of our memorandum opinion and order released October 28, 1970 (FCC 70–1125 52928), which designated the other applications for hearing.

Adopted: November 25, 1970.

Released: December 3, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[1]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–16480; Filed, Dec. 7, 1970; 8:50 a.m.]

[Dockets Nos. 18306, 18307; FCC 70R–383]

SOUTHERN BROADCASTING CO. AND FURNITURE CITY TELEVISION CO., INC.

Memorandum Opinion and Order Enlarging Issues

In regard applications of Southern Broadcasting Co. (WGHP–TV), High

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[7] Radio New Jersey, in its comments, takes no position on the merits of the instant request, but states that in the event the Bureau's petition is granted and the issues enlarged, Radio New Jersey will participate in whatever further proceedings ensue.

[8] Although the instant petiton was not timely filed, it is not opposed on that ground, and, in our opinion, the Bureau has established good cause for the delay in filing.

[9] Board Members Berkemeyer and Kessler absent.

[1] Commissioner Bartley absent.

Point, N.C., for renewal of broadcast license, Docket No. 18906, File No. BRCT-574; Furniture City Television Co. Inc., High Point, N.C., for construction permit for new television broadcast station, Docket No. 18907, File No. BPCT-4302.

1. This proceeding involves the mutually exclusive applications of Southern Broadcasting Co. (WGHP-TV) (Southern), for renewal of its television Broadcast license in High Point, N.C., and of Furniture City Television Company, Inc. (Furniture City) for authorization to construct a new television broadcast station in the same community. It was designated for hearing by Commission Order, FCC 70-706, 35 F.R. 11277, published July 14, 1970, on a standard comparative issue. Presently before the Review Board is a motion to enlarge issues, filed July 21, 1970, by Furniture City.[1] Furniture City seeks to adduce evidence concerning alleged serious deficiencies in Southern's operation of WGHP-TV (Channel 8) under the existing issues or, in the alternative, addition of the following issue: To determine whether the operation of WGHP-TV, Channel 8, High Point, N.C., by Southern Broadcasting Co. has been characterized by serious deficiencies, as evidenced by continuing unkept promises and misrepresentations made to the Commission by a corporate applicant controlled by Southern in both the application for construction permit for Channel 8 and in a subsequent comparative hearing.

2. Furniture City grounds its request on the contention that from the beginning of its operations in 1963, WGHP-TV has failed to keep the promises made to the Commission by Southern's predecessor corporation[2] in its original application for a construction permit and in the subsequent comparative hearing, which led to grant of that application by the Commission, Jefferson Standard Broadcasting Co., FCC 62-1011, 24 RR 319. In support of its contention, and relying to a great extent upon the affidavit of a former art director and promotion manager of WGHP-TV, Jeanne Bailes, petitioner first alleges that Southern failed by more than 50 percent to fulfill its promise to present 61 local live programs per week; Furniture City details the alleged failure to telecast such programs in the categories of agriculture, education, discussions and talks. Petitioner emphasizes that in the comparative proceeding awarding a construction permit to Southern, the Commission held that that applicant and another applicant were entitled to preferences "* * * by virtue of the substantially greater time which they will make available to the local transmission needs of the city of High Point, and for their greater attention to local-live programing generally." Next, Furniture City points to Southern's proposal to operate with a staff of 92 full-time employees and its pregrant representation that it had already selected eight members of its operational staff, and contends that Southern never employed more than 80 staff members and that only two of the eight named employees were ever hired. Petitioner notes Southern's proposals to have seven of its stockholders act as "coordinators" between the working staff and the "Programs Advisory Committee" and to institute seven management committees, and refers to the statement of Miss Bailes, in her affidavit, that, with one exception, she never met any of the proposed coordinators or members of the management committees and that, to her knowledge, none of them ever dealt with any Channel 8 employees. As for Southern's proposal to establish a 16-member program advisory committee, petitioner claims that, after one meeting, the Committee simply faded away and, in addition to Miss Bailes' affidavit, presents the affidavit of one of the members of the committee who indicates a vague, uncertain recollection of a single meeting. Next, Furniture City refers to Southern's promises to maintain studios in the three major communities in the broadcast area, Winston-Salem, Greensboro and High Point (two studios) and to provide a mobile television unit, and contends that Southern now has only one studio, in a much different form than proposed, in High Point; that it has never had a studio in Greensboro; that "[t]he miniscule amount of programing originating from Winston-Salem has been done by using the radio facilities of Station WTOB in that city, a commonly owned property * * *"; and that Southern has never owned a mobile television unit. Finally, petitioner notes that Southern was awarded a preference at the comparative hearing in the area of integration, which was to be achieved through a 3-year "irrevocable" trust agreement, whereby nine stockholders from Erie Pa., and New York State, who collectively owned 35 percent of Southern's stock, were to assign their voting interests to a local resident, the vice president of Southern. However, Furniture argues that Southern violated that promise when the license of Station WGHP-TV was assigned from Southern Broadcasters, Inc., to Winston-Salem Broadcasting Co., Inc. (subsequently Southern Broadcasting Co.), and the shares owned by the out-of-state stockholders were purchased by Winston-Salem.

3. Furniture City argues that nothing in the Commission's Policy Statement on Comparative Hearings Involving Regular Renewal Applicants, 22 FCC 2d 424, 18 RR 2d 1901 (1970), precludes consideration of the questions it has raised just because the deficiencies involved occurred, in part, prior to the renewal period presently in issue. It contends that the language of the Policy Statement, supra, limits the affirmative showing which a renewing licensee must make with respect to program service to the 3-year period in issue, but that the negative showing to be supplied by a challenging applicant with respect to deficiencies in the operation of the station is not similarly limited. It points to RKO General, Inc., 8 FCC 2d 632, 10 RR 2d 282 (1967), as a case involving a renewal applicant in which past questionable conduct involving allegations going back prior to the renewal period was adjudged admissible without the need to raise special issues. However, Furniture City contends, if the need exists to add an issue, the Review Board may do so, citing WPIX, Inc., 23 FCC 2d 245, 19 RR 2d 182 (1970).

4. In opposition, Southern argues that the Policy Statement, supra, does indeed limit the instant proceeding to Southern's operation of Channel 8 during the 1966-69 period. The applicant argues that "approval of a renewal application by the Commission is in effect a res judicata approval of the licensee's prior service to the community" and points to the Commission's renewal of the license of WGHP-TV in 1966. Southern maintains that if Furniture City's reasoning "is followed to its logical conclusion, then a broadcaster, whenever challenged, would have to defend its entire broadcast record and the record would be tremendously burdened with baseless allegations and innuendos," and bad precedent would be established completely at odds with the predictability and stability of broadcast operations which the Commission is attempting to attain by the 3-year renewal rule and the Policy Statement. It contends that neither RKO General, Inc., supra, nor WPIX, Inc., supra, are applicable here, because the former case pre-dates the Policy Statement, the latter case involved deficiencies which occurred during the license period under consideration and extended back into the prior license period, and both involved alleged deficiencies different from those alleged by Furniture City here, i.e., antitrust, sponsorship identification and equal opportunity questions.

5. Although Southern contends that the allegations of Furniture City, even if correct, cannot be considered in this proceeding, it presents the affidavits of nine present and former employees and officers of WGHP-TV in refutation of those allegations. First, the applicant contends that Miss Jeanne Bailes, on whose affidavit petitioner centrally relies, "did not hold anything remotely similar to a 'key' position until July of 1969" and "resigned" in October, 1969, after being informed by the General Manager "that her performance was less than satisfactory." As to the specific allegations, Southern makes the following points, relying upon its attached affidavits:

[1] Also before the Review Board are: (a) Opposition to motion to enlarge issues, filed Aug. 7, 1970, by Southern; (b) reply to opposition, filed Aug. 12, 1970, by Furniture City; and (c) Broadcast Bureau's opposition to motion to enlarge issues, filed Sept. 11, 1970.

[2] The predecessor corporation was Southern Broadcasters, Inc., which was 55 percent owned by Winston-Salem Broadcasting Co., Inc. In 1965, the WGHP-TV license was assigned to the latter corporation, which subsequently changed its name to Southern Broadcasting Co. For convenience, Southern and the predecessor corporation will both be referred to as Southern.

(a) Southern claims that its promise of 33 hours and 10 minutes weekly of local live programing was almost completely met and points to the period of of 33 hours and 10 minutes weekly of January–July, 1965, as indicative.[3] As for Furniture City's allegations concerning specific program categories, Southern contends that petitioner consistently failed to take account of the fact that some of the original programing proposals were covered by programs bearing different names.

(b) The applicant concedes that it did not fulfill its proposal of 92 full-time employees, but argues that the important point is that it was able to serve the public interest with a smaller staff.

(c) Southern also concedes that it employed only two of the eight named employees originally proposed, but again argues that the important point is that all of the positions were filled with competent individuals, and presents the affidavit of one of the individuals originally proposed, who explains why he was not employed.

(d) As for petitioner's allegations in regard to the proposed program coordinators, program management committees and program advisory committee, Southern maintains that, although Furniture City's affiant was "unaware" of their operation, it has presented affidavits of people who attended the meetings of these groups and took minutes.

(e) With regard to its studios, Southern contends that there was a studio in Winston-Salem in 1964 and 1965, which originated a substantial amount of programing; that great difficulties were encountered in setting up a studio in Greensboro, but that the Commission has approved its plan to locate a single studio in the hub of the "Piedmont Golden Triangle" close to the Greensboro-High Point-Winston-Salem Airport; and that there are two studios in High Point, as originally proposed.

(f) Southern contends that it did meet its proposal in regard to the mobile television unit and in other ways exceeded its equipment proposal.

(g) The applicant admits that the 3-year voting-trust arrangement was prematurely revoked, but argues that by revoking the trust, the desirable goal of 100 percent local ownership was assured.

Finally, Southern contends that no complaints concerning the public service programing of WGHP–TV have been received by the Commission. The Broadcast Bureau, in its opposition, urges that the matters raised can be explored under the existing issue to the extent that they represent a pattern of conduct extending into the most recent renewal period, but that no separate issue is warranted.

6. In reply, Furniture City contends that "the Commission has not heretofore let the grant of an unopposed renewal application bar later examination into deficiences which had not earlier been called to its attention" and that limitations of staff have led the Commission, as a practical matter, to depend upon advocates in a hearing context to reveal deficiencies such as those alleged here. Petitioner argues that such alleged deficiencies must be explored in hearing because (1) the Commission was misled in the original grant of a license to Southern by misrepresentations and (2) due to these misrepresentations, there were serious deficiencies in the operation of Channel 8 during the 1963–66 period, to the extent that if Southern had promised what it actually delivered, it would not have been awarded a license. Moreover, Furniture City maintains that an administrative "Pondora's box" would not be opened if its allegations are explored, since most applicants fulfill their promises and, in any case, "the mere possibility of increased work load has not been considered as a factor by any agency or court known to Furniture City when a determination is made as to what is right or wrong." As for Southern's argument that WPIX, Inc., supra, does not apply to this situation because the alleged deficiencies there occurred during the renewal period and extended back into the prior license period, Furniture City contends that the fact of an extension backward should not be the deciding factor and, in any case, such an extension backward is equally present in this case.

7. In regard to the specific allegations of unkept promises, and in reply to the position of Southern's affiants that program proposals were carried out in substance, Furniture City attaches the program schedules supplied by Southern to the daily High Point newspaper for various weeks in 1963-66. Utilizing these schedules, petitioner concludes that even assuming "that each of the programs held forth in the Southern affidavits as having been used as performance vehicles was in fact so used and sufficiently so that it could be classified in the appropriate program classifications which Southern promised in its paper proposal," there is a great disparity between programing promises and performance.[4] Furniture City further contends that Southern has submitted no documentary evidence in support of its affidavits, even though such evidence appears to have been available. As to specific affidavits, petitioner points out that one of the affidavits recites what Southern's president was told by another ex-Southern employee, with no affidavit from that employee, and that the vice-president and general manager has only worked for Southern since May 1963, and his affidavit is confined to his uncorroborated assertions of what he found in the company records.

8. The Review Board is of the opinion that a disqualifying issue must be added to inquire into the substantial questions which have been raised as to whether Southern has significantly failed to keep promises made to the Commission in its application for a construction permit and during the course of the comparative hearing which resulted in the grant of its license. Furniture City's most serious allegations of nonperformance involve the licensee's commitments in regard to local live programing in the categories of agriculture, education, discussion and talk programs, which commitments resulted in the award of a comparative preference to the licensee. Southern counters these allegations with the assertion, which recurs throughout the statements of most of its affiants, that it substantially kept its programing commitments through the medium of substitute programs. However, the licensee's opposition does not give a clear picture of how close it came to meeting its promises in terms of total broadcast time in each category,[5] or present any documentary evidence to support the often general statements contained in the affidavits supplied with the opposition pleading; Furniture City's reply, by its comparison of published television schedules

[3] Southern alleges that the total time devoted to local live programing during this period was as follows:

January 1965	31 hours, 53 minutes.
February 1965	30 hours, 13 minutes.
March 1965	29 hours, 29 minutes.
April 1965	30 hours, 29 minutes.
May 1965	31 hours, 29 minutes.
June 1965	32 hours, 8 minutes.
July 1965	34 hours, 20 minutes.

[4] Petitioner contends that the following, utilizing only those weeks where Southern's record was best, gives a picture of Southern's performance versus promise:

Southern's commitment		Maximum performance capability	
	Weekly		Weekly
Agriculture	4' 10"	1963	1' 15"
		1964	4' 00"
		1965	4' 00"
		1966	2' 20"
Education, discussion and talks	15' 25"	1963	2' 20"
		1964	8' 00"
		1965	17' 20"
		1966	45"

[5] Southern's figures (footnote 3, supra), taken from the affidavit of its Vice President and General Manager, and supported by no corroborating data, deal only with total live weekly programing and set forth no information as to programing types.

with Southern's promises, giving "full faith and credit" to the assertions of Southern's affiants on the subject of program content, increases the doubts concerning Southern's programing performance.

9. The added issue must also encompass an inquiry into alleged failures by Southern to meet promises with regard to its staffing, studio and equipment proposals. The licensee has provided no satisfactory explanation for the fact that it initially proposed a staff of 92 full-time employees, but retained a staff of only 79 at the time of its 1966 renewal application and 73 at the time its present application was filed in 1969, except to make the general, basically unelaborated argument that it has found that it can operate in the public interest with a smaller staff. Southern makes the identical unsatisfactory argument in opposition to Furniture City's contention that Southern failed to hire six of eight persons proposed for key staff positions prior to grant. It also presents the affidavit of one of the individuals who was not ultimately employed by WGHP–TV, which explains his situation but sheds no light on the circumstances surrounding the failure of the other named persons to work at the station. Inquiry is also required into Southern's failures to provide any studio in Greensboro, to carry out its proposal to build a new studio in High Point (rather than to lease space in a local hotel), and to maintain its studio in Winston-Salem beyond 1965. Finally, substantial questions are also raised concerning the licensee's failure to provide its promised mobile television unit. In its opposition, Southern maintains that it did acquire such a unit and points to the affidavit of its Director of Engineering, but he only indicates that WGHP–TV acquired certain items of equipment making possible remote broadcasts; he admits that the acquisition of an actual vehicle for transport was several times seriously considered and rejected.

10. However, we believe that Furniture City's allegations concerning Southern's proposed program coordinators, program management committees and program advisory committee fail to raise substantial questions of promise versus performance which must be explored under the added issue. Petitioner presents only the statement by Miss Bailes, who for most of her tenure at the station was not in a high management position, that, with one exception, she had never met any of the proposed coordinators or committee members and knew of no WGHP–TV employees who had been consulted by them. Southern's showing in opposition, while lacking in specificity and completeness, is partially based upon the sworn statements of individuals who attended committee meetings or met members of the program management committees and is sufficient to meet Furniture City's weak allegations. Nor does petitioner's showing in regard to the premature termination of the stock trust agreement raise questions concerning promise and performance in the area of integration. The termination of the trust resulted in the placement of 100 percent of the stock in local hands, a situation closer to the ideal integration situation than would have obtained if the trust had run its course.

11. While the Commission has made clear that a licensee is not held to a rigid implementation of its proposals and must be given leeway to meet changed area needs and interests (KORD, Inc., 31 FCC 85, 21 RR 781 (1961)), there is strong precedent for the addition of a disqualifying issue in a situation, such as the instant one, in which there is a substantial question as to whether a licensee has failed to carry out pregrant proposals which played a central role in the award of its license. A leading case in this area is Tidewater Teleradio, Inc., FCC 62–1246, 24 RR 653, in which the Commission ruled that an application for assignment of AM and television station licenses could not be granted without a hearing on serious questions which had been raised concerning whether the licensee had carried out integration representations which had constituted an important element in the comparative hearings in which the construction permit for a television station was granted. The Commission found that failure to carry out the integration proposals might also have been a cause of the licensee's admitted failure to carry out its programing proposals. See also Moline Television Corp. (WQAD–TV), FCC 68–112, 11 FCC 2d 592. Moreover, the fact that the applicant in question had previously been granted an uncontested renewal did not prevent the specification of appropriate issues in the Tidewater case, and we do not believe it should bar the addition of an issue here. Cf. National Broadcasting Co., Inc., 37 FCC 427, 2 RR 2d 921 (1964). Finally, we are of the opinion that nothing in the Commission's Comparative Renewal Policy Statement, supra, prevents the adduction here as in Tidewater Teleradio, supra, of evidence relating to events and alleged deficiencies in license terms prior to the latest license period (1966–69). The Commission's emphasis in the Policy Statement on the "preceding license term" relates to the threshold showing which a renewing licensee must make in a contested renewal proceeding that its program service has been attuned to the needs and interests of its area, not to the separate public interest questions raised by deficiencies which call into question an applicant's requisite qualifications to remain a Commission licensee. The integrity of the Commission's basic processes could be undermined if, in the absence of a convincing showing of altered community needs or interests, a licensee engages in serious departures from key pregrant proposals. A basic qualifications issue will be added.

12. *Accordingly, it is ordered,* That the Motion to Enlarge Issues, filed July 21, 1970, by Furniture City Television Co., Inc., is granted to the extent indicated herein and denied in all other respects; and

13. *It is further ordered,* That the isuses in this proceeding are enlarged by addition of the following issue: To determine whether Southern Broadcasting Co. failed to carry out representations made in Docket No. 13072 as to programing, staffing, studios and equipment in operation of WGHP–TV, High Point, N.C., and, if so, the effect of such conduct on the requisite and comparative qualifications of Southern Broadcasting Co. to be a Commission licensee; and

14. *It is further ordered,* That the burdens of proceeding and proof under the issue added herein shall be on Southern Broadcasting Co.

Adopted: November 13, 1970.

Released: November 17, 1970.

FEDERAL COMMUNICATIONS COMMISSION,[6]

[SEAL] BEN F. WAPLE, *Secretary.*

[F.R. Doc. 70–16481; Filed, Dec. 7, 1970; 8:50 a.m.]

FEDERAL MARITIME COMMISSION

POLSKIE LINIE OCEANICZNE

Notice of Issuance of Casualty Certificate

Security for the protection of the public; financial responsibility to meet liability incurred for death or injury to passengers or other persons on voyages.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR 540):

Polskie Linie Oceaniczne (Polish Ocean Lines), Ul. Lutego 24, Gdynia 1, Poland.

Dated: December 2, 1970.

FRANCIS C. HURNEY, *Secretary.*

[F.R. Doc. 70–16472; Filed, Dec. 7, 1970; 8:50 a.m.]

POLSKIE LINIE OCEANICZNE

Notice of Issuance of Performance Certificate

Security for the protection of the public; indemnification of passengers for nonperformance of transportation.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility of Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777

[6] Dissenting Statement of Board Member Berkemeyer filed as part of the original document. Board Member Nelson dissenting and voting to permit consideration of request under existing issues.

(80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540):

Polskie Linie Oceaniczne (Polish Ocean Lines), Ul. Lutego 24, Gdynia 1, Poland.

Dated: December 2, 1970.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-16473; Filed, Dec. 7, 1970; 8:50 a.m.]

CONCORDIA LINE A/S ET AL.

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1405 I Street NW., Room 1202; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Edwin Longcope, Esq., Hill, Betts and Nash, 26 Broadway, New York, NY 10004.

Concordia Line A/S, Niagara Line A/S, Compagnie Fabre S.G.T.M., Montship-Capo Great Lakes Service, and Hispalac S.A.

Agreement No. 9911 would establish a sailing and ratemaking agreement among the above noted parties in the trade between the U.S. Great Lakes on the one hand and the Mediterranean, including Gibraltar, the Black Sea, and Atlantic ports of Portugal, Spain, and Morocco, on the other.

Dated: December 2, 1970.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[F.R. Doc. 70-16474; Filed, Dec. 7, 1970; 8:50 a.m.]

FEDERAL POWER COMMISSION

[Docket No. R-371; etc.; Order No. 411-B]

AREA RATES FOR THE APPALACHIAN AND ILLINOIS BASIN AREAS ET AL.

Order Denying Petitions for Reconsideration, Applications for Rehearing and Stay

NOVEMBER 27, 1970.

Area Rates for the Appalachian and Illinois Basin Areas, Docket No. R-371; Ashland Oil & Refining Co. et al., Docket No. RI66-211 etc.; Richter Oil Co. v. Pennzoil United, Inc., Docket No. RI71-436.

On October 30, 1970, Richter Oil Co. (Richter) filed a petition for reconsideration of the Commission's Order No. 411, issued October 2, 1970, and for special relief thereunder.[1] Texaco, Inc. (Texaco), filed an application for rehearing on October 30 of Order No. 411, and on November 2, Ashland Oil, Inc. (Ashland), Columbia Gas System Companies (Columbia), Cities Service Oil Co. (Cities); and Consolidated Gas Supply Corp., Kentucky-West Virginia Gas Co., Iroquois Gas Corp., Pennsylvania Gas Co. and United Natural Gas Co. (Consolidated), each filed an application for rehearing or petition for reconsideration of said Commission order. By Order No. 411, the Commission added new §§ 154.107 and 154.108, and new paragraphs (e) and (f) to § 157.40, to its regulations under the Natural Gas Act. The order also required Ashland, Pittston, Corp. and Cabot Corp., in certain related proceedings, to compute, report and retain certain sums of monies charged and collected subject to refund at rates in excess of those determined by the Commission to be just and reasonable in its opinion and order.

The new provisions of the regulations set forth maximum and minimum just and reasonable rates for the Appalachian and Illinois Basin Areas and provided for the issuance of Small Producer Certificates for small producer sales in such areas.

Richter requests reconsideration by the Commission of that section of Order No. 411 concerning a minimum rate to be paid producers of natural gas in the Appalachian Basin Area. The Commission in adopting the new § 154.107, in paragraph (d) thereof (as amended by Order No. 411-A on Oct. 30, 1970) fixed a minimum rate "for natural gas produced and sold to a pipeline company, or its affiliate" at 19.25 cents per Mcf at 14.73 p.s.i.a. (20 cents per Mcf at 15.325 p.s.i.a.). Richter asks (1) that the restriction of the minimum rate's applicability only to sales to pipeline companies be rescinded and that the minimum rate apply to all sales by producers in Appalachia, or (2) that its purchaser, Pennzoil United, Inc. (Pennzoil), be found to be an affiliate of a pipeline company so that the minimum rate would apply to Richter's sales to Pennzoil.

We stated in Order No. 411 that our reason for restricting the minimum rate to sales to pipeline purchasers was that to do otherwise might have an adverse effect on the resale rates of producers who purchase gas from other producers in the area, particularly where such resale rates are below the ceilings we prescribed in that order. Nothing Richter sets forth in its petition shows that we should relax the restriction we adopted.

In regard to Richter's second reason for affording it the minimum rate, the Commission takes note that Pennzoil is affiliated with United Gas Pipe Line Co. (United). But none of the gas that Pennzoil purchases from Richter is delivered by it to United. Therefore, United is not concerned here, and the sales by Richter to Pennzoil are not in fact to an affiliate through which the gas flows to its affiliated pipeline company. Consequently, Richter's request for reconsideration on the ground of affiliation must also be denied.

Richter additionally filed a petition for special relief[2] from the contract prices for which it produces and sells its gas to Pennzoil, which it avers are unreasonably low. We shall dispose of Richter's petition by separate order.

We have considered the contentions, and arguments in support thereof, made by Texaco, Ashland, Columbia, Cities, and Consolidated in each of their petitions for reconsideration or applications for rehearing. Not one of them raise a point of law regarding the procedure that we followed in adopting Order No. 411 which was not fully considered by us in its adoption.[3]

Consolidated raises some question regarding the efficacy of the new regulations we adopted by Order No. 411 as juxtaposed with other regulations under the Natural Gas Act. We did not, and do not think it is necessary to provide expressly that no inconsistency is intended where it clearly is not. To answer directly one of Consolidated's contentions, we did not provide that Order No. 411 is

[1] Order No. 411-A, Order Amending Order Establishing Just and Reasonable Rates, was issued on Oct. 30, 1970, and does not affect any of the filings concerned herein, nor did the textual amendment of the last sentence in §§ 154.107(e) and 154.103(e) as set forth in ordering paragraph (c) of said order affect in any way the footnotes to said paragraphs.

[2] The proceeding concerning the petition for Special Relief has been docketed as "Richter Oil Company v. Pennzoil United, Inc., Docket No. _____". It is not consolidated with the other proceedings with which we are concerned herein.

[3] Cities Service questions whether "* * * the 'record' to which the Commission refers, is comprised of the Staff report and the 'hearing' is based on the June 2, 1970, informal conference * * *". As stated in our Order No. 411: "We fully considered the staff report, and accepted it as evidence. We received lengthy and well-considered comments from many parties, and answers to said comments made by other parties. And, we considered the staff's minutes of the conference of June 2, 1970, and the comments on such minutes filed by Cities Service on July 24, 1970. Added to our consideration of all of this rather extensive record * * *". Thus each of the documents received constituted a part of the record, whether tendered under oath or not, and upon our consideration of them we gave full hearing.

not to be read to be inconsistent with the policy set forth in Opinion No. 567 regarding production from newly discovered reservoirs because such was not necessary.[4] Nor do we see other inconsistencies which some of the parties appear to fear might arise.

Columbia again urges that we consider fixing firm rates for deeper drilling in the Appalachian area and asks that we examine the testimony of its witness in Docket No. R-389A in support of its contention. We have carefully considered fixing firm rates for new gas supplies discovered below 8,000 feet, but, even Columbia showed in its evidentiary presentation in this proceeding and in Docket No. R-389A, that it is infeasible to establish a factual predicate for any specific higher rate. We adhere to our determination to consider each contract for the sale of such new gas on an ad hoc basis when application is made for a certificate. No party has been able to show any experience in the Appalachian area to support establishment of a firm rate for deeper drilling. To adopt any suggested firm price might well be a deterrent rather than an incentive. We believe that Order No. 411 clearly sets forth our awareness that for any pipeline or producer to undertake deeper drilling in the Appalachian Basin area there must be encouragement from this Commission. We believe we have given that encouragement.

Ashland requests that the Commission stay paragraphs (A), (C), (D), and (F) of Order No. 411 insofar as they are applicable to its sale of natural gas to Consolidated Gas Supply Corp. under Ashland's FPC Gas Rate Schedule No. 113. Prior to the effective date of Order No. 411, October 2, 1970, Ashland was charging and collecting a rate of 30.61 cents per Mcf at 14.73 p.s.i.a. (31.85 cents at 15.325) subject to refund, and it was ordered to reduce such rate to the applicable just and reasonable rate of 29 cents per Mcf at 14.73 p.s.i.a. (30 cents at 15.325) and to compute and file a refund report, retaining such refund monies pending a final order of the Commission regarding disposition of the same. Ashland filed its refund report on November 4, 1970. Consequently, Ashland is, in effect, now seeking only a stay of those provisions of Order No. 411 which require it to charge no more than the applicable just and reasonable rate. Consonant with out denial of the petitions for reconsideration and applications for rehearing herein, we shall deny Ashland's motion for a stay.

Correlatively, we shall require Ashland under its FPC Gas Rate Schedule No. 113 to file a supplement to said rate schedule within 15 days of issuance of this order, to reflect the applicable rates made effective by our adoption of the new §154.107 on October 2, 1970.

[4] Cf. Order Clarifying And Modifying Prior Orders, issued Oct. 28, 1970, Area Rate Proceeding et al. (Hugoton-Anadarko Area) Docket No. AR64-1 et al.

The Commission finds:

(1) The assignments of error and grounds for reconsideration and for rehearing set forth in the petitions and applications filed in this proceeding by Richter, Texaco, Ashland, Columbia, Cities, and Consolidated, present no facts or legal principles which were not fully considered by us, or which now being reconsidered by us would warrant any change or modification of the Commission's Order No. 411, as modified by Order No. 411-A, issued October 2 and 30, 1970, respectively.

(2) The motion for stay filed by Ashland on November 2, 1970, should be denied.

(3) The petition for special relief filed by Richter on October 30, 1970, should be disposed of by a separate order of the Commission.

The Commission orders:

(A) The petitions for reconsideration and applications for rehearing of Order No. 411, as modified by Order No. 411-A, are denied.

(B) The motion for stay of Order No. 411, filed by Ashland is denied.

(C) Action on the petition for special relief filed by Richter in Docket No. RI71-436 is deferred pending further order of the Commission.

(D) Ashland Oil, Inc., shall file under its FPC Gas Rate Schedule No. 113 a rate schedule supplement, within 15 days of the date of issuance of this order, to reflect the applicable just and reasonable rate prescribed by § 154.107 of the Commission's regulations under the Natural Gas Act. The supplement will be submitted in accordance with Part 154 of the Commission's regulations under the Natural Gas Act.

By the Commission. Commissioner Carver not participating.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-16407; Filed, Dec. 7, 1970; 8:45 a.m.]

[Docket No. R-380]

ACCOUNTING AND RATE TREATMENT OF ADVANCE PAYMENTS TO SUPPLIERS FOR GAS AND AMENDING FPC FORM NO. 2

Order Granting Rehearing for Purposes of Further Consideration

NOVEMBER 27, 1970.

On October 2, 1970, we issued Order No. 410 (35 F.R. 15908, Oct. 9, 1970) amending our regulations under the Natural Gas Act to prescribe for accounting and rate treatment of advance payments made by pipeline companies to their suppliers of natural gas. That order also amended the Uniform System of Accounts for Class A and Class B Natural Gas Companies consistent with amendments to the regulations.

Petitions for reconsideration of Order No. 410 were filed by eight independent producers, five pipeline companies, one natural gas association, and two public service commissions.[1]

For the purpose of allowing us an opportunity to give full and adequate consideration to the matters set forth in the foregoing petitions for rehearing, we shall grant the petitions for rehearing.

The Commission finds:

In order to afford further time for consideration of the issues raised in the petitions for rehearing, it is appropriate, and proper in the administration of the Natural Gas Act that rehearing be granted.

The Commission orders:

The rehearing sought by the above-listed petitioners is granted for the limited purpose of further considering the issues raised therein.

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-16408; Filed, Dec. 7, 1970; 8:45 a.m.]

[Docket Nos. RF69-19, RP70-2, CP67-307, G-1972]

CONSOLIDATED GAS SUPPLY CORP.

Notice of Proposed Tariff Changes

DECEMBER 1, 1970.

Take notice that Consolidated Gas Supply Corp. (Consolidated) on November 27, 1970, tendered for filing to become effective January 1, 1971, a new FPC Gas Tariff, First Revised Volume No. 1, supersede its Original Volume No. 1.

Consolidated states that the proposed filing is submitted to comply with the requirements of Article VII of the Settlement in the proceeding which was approved by order issued September 18, 1970. Because of the large number of revisions required under that article, it is more convenient to replace Consolidated's existing Original Volume No. 1 with a First Revised Volume No. 1. No change in the level of the currently effective rates and charges is proposed by Consolidated.

In addition to the tariff changes required to comply with the Settlement, Consolidated proposes a change in the style of presenting the unit rates and charges applicable to each of the rate schedules contained in Volume No. 1. In the currently effective Original Volume No. 1, the unit rates and charges applicable to each rate schedule appear within the particular rate schedule. In First Revised Volume No. 1, all of the unit

[1] California Co., Division of Chevron Oil Co., Gulf Oil Corp., Mobil Oil Corp., Pan American Petroleum Corp., Phillips Petroleum Co., Shell Oil Co., Superior Oil Co., Texaco, Inc., Independent Natural Gas Association of America, Natural Gas Pipeline Company of America, Northern Natural Gas Co., Tennessee Gas Pipeline Co., Texas Eastern Transmission Corp., Transcontinental Gas Pipeline Co., Public Utilities Commission of the State of California and Public Service Commission of the State of New York.

rates and charges applicable to all of the rate schedules in Volume No. 1 appear in one place, on Sheet No. 8, which is incorporated by reference in each rate schedule. This rearrangement was made so that in the future, when changes are made in the unit rates and charges, only Sheet No. 8 will be superseded, rather than the procedure which has been followed which requires changing a substantial number of sheets throughout Volume No. 1 in order to make the changes in unit rates and charges in each particular rate schedule.

Copies of Consolidated's filing were served on each of its jurisdictional customers, other persons who intervened in this proceeding, and interested State commissions.

Comments or protests with reference to this filing should on or before December 21, 1970, be submitted to the Federal Power Commission, 441 G Street NW., Washington, DC 20426.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16433; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. E-7560]

DELMARVA POWER & LIGHT CO.

Order Suspending Tendered Rate Schedules, Rejecting Rate Schedule Supplement Tendered, and Providing for Hearing

NOVEMBER 27, 1970.

This order suspends for 5 months the operation of tendered rate schedules and orders a public hearing to be held on the lawfulness of those schedules. Additionally, it rejects a rate schedule supplement tendered for filing.

Delmarva Power & Light Co. and its Maryland and Virginia subsidiary companies (Delmarva), public utilities subject to the jurisdiction of this Commission, filed on September 18, 1970, rate schedule changes consisting of revised sheets for two electric tariffs now applicable to nine municipal and two privately-owned utility customers; supplements to present rate schedules covering service under its contracts with three other municipal customers; and new electric tariffs to supersede present rate schedules covering service under its contract with three rural electric cooperative customers. The proposed rate schedule changes are identified in Appendix A attached hereto. The resulting estimated increase in annual revenue is $1,039,040, based on sales for the 12-month period ending July 31, 1971.

Although Delmarva's filings are proposed to become effective December 1, 1970, the proposed tariffs providing for service to the cooperatives would not apply until the contracts incorporated in present rate schedules have been replaced by executed service agreements under the tariffs. In this connection, pursuant to the contracts involved, Delmarva has given 12-months notice to the cooperatives of its intent to terminate the presently applicable rate schedules as of October 1, 1971.

Delmarva contends that the proposed increase in rates is due to the substantial increase in the cost of all principal items necessary to produce and distribute electric power combined with the need to engage in a program of capital construction to meet the needs of its customers and the ecological and environmental standards of society.

Notice of the filing was given by publication in the FEDERAL REGISTER on October 10, 1970 (35 F.R. 16019), stating that any person desiring to be heard or to make any protest with reference to said application, should on or before October 30, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure. Protests and petitions to intervene were received from seven customers (three cooperatives and four municipals) and one individual. In addition, a protest was received from the University of Delaware. The protests alleged that the proposed rates are unjust and unreasonable and asked that they be suspended for 5 months. Dover also asked that the rate increase tendered for Dover be rejected on the ground that it cannot legally be filed at this time. We shall act on the petitions to intervene at a later time.

Our review of the rate schedule supplement filed with respect to the city of Dover, Del., and the contract involved indicates that Delmarva has failed to show—as required by § 35.13(a) of our regulations under the Federal Power Act (18 CFR 35.13(a))—that all requisite agreement to the proposed change has in fact been obtained. Dover's present contract with Delmarva, which does not expire until July 1, 1972, does not provide for unilateral filing of rate increases by Delmarva. Thus, the rate schedule supplement tendered for service to the City of Dover must be rejected. See United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332; Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348. Such rejection is, of course, without prejudice to a refiling upon Delmarva's obtaining and showing the requisite agreement on the part of the city of Dover.

The Commission further finds:

(1) The tendered rate schedule filings designated in Appendix A attached hereto may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful under the Federal Power Act.

(2) It is necessary and appropriate for purposes of the Federal Power Act, particularly sections 205, 206, 301, 307, 308 and 309 thereof, and the Commission's rules and regulations thereunder: that the tendered rate schedule supplement for service to the city of Dover, Del., be rejected for filing; that the Commission enter upon a hearing concerning the lawfulness of the other filings tendered by Delmarva; and that the tendered filings be suspended, and the use thereof be deferred, in accordance with the procedures set forth below, all as hereinafter provided.

The Commission orders:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by the Federal Power Act and pursuant to the Commission's rules of practice and procedure, a public hearing shall be convened at the offices of the Federal Power Commission in Washington, D.C., at a date and time to be set by the hearing examiner of the Commission designated to preside over these proceedings, concerning the lawfulness of Delmarva's rate schedules identified in Appendix A hereto.

(B) The tendered rate schedule supplement pertaining to service to the city of Dover, Del., is rejected for filing and returned to Delmarva. One copy will be retained in the Commission's files for information purposes only.

(C) Pending the hearing and decision thereon, the tendered rate schedules designated in Appendix A attached hereto are hereby suspended and the use thereof deferred until May 1, 1971. On that date those filings shall take effect in the manner prescribed by the Federal Power Act, and Delmarva, subject to further orders of the Commission, shall charge and collect the increased rates and charges set forth in those filings for all power sold and delivered thereunder. *Provided, however,* That the rate schedules for service to the rural electric cooperatives shall not take effect until the expiration of their present contracts with Delmarva.

(D) Delmarva shall file with the Commission and serve on all parties, on or before February 24, 1971, its case-in-chief, including testimony and exhibits, in support of the suspended rate schedules. The parties to the proceeding may submit to the Presiding Examiner, on or before March 24, 1971, proposed dates for commencement of cross-examination of Delmarva's witnesses. If any party believes that a prehearing conference would serve to expedite the proceeding, motions therefor may also be filed with the Presiding Examiner on or before March 24, 1971. Such motions should include a statement of how the proceeding would be expedited by a prehearing conference and a proposed agenda. All other procedural dates will be as ordered by the Presiding Examiner.

(E) Delmarva shall refund at such times and in such manner as may be required by final order of the Commission the portion of the increased rates and charges found by the Commission in this proceeding not justified, together with interest at the New York prime rate on May 1, 1971, from the date of payment until refunded; shall bear all costs of any such refunding; shall keep accurate accounts in detail of all the amounts received by reason of the increased rates and charges effective as of May 1, 1971, for each billing period; and shall report (original and one copy) in writing and under oath, to the Commission monthly, for each billing period, the billing determinants of electric energy sold and

delivered under the subject rate schedules, and the revenues resulting therefrom as computed under the rates in effect immediately prior to May 1, 1971, and under the rates and charges made effective by this order, together with the differences in the revenues so computed.

(F) Unless otherwise ordered by the Commission, Delmarva shall not change the terms or provisions of the suspended rate schedules or of its presently effective rate schedules until this proceeding has been terminated or until the period of suspension has expired.

(G) Notices of intervention and petitions to intervene may be filed with the Federal Power Commission, Washington, D.C. 20426, on or before December 20, 1970, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8 or 1.37).

By the Commission.

[SEAL] GORDON M. GRANT, *Secretary.*

APPENDIX A

DELMARVA POWER & LIGHT CO. AND SUBSIDIARIES

DESIGNATIONS OF INSTRUMENTS EFFECTING RATE INCREASE

A. Proposed change in Tariff rates for municipal and private company customers.

Delmarva Power & Light Co., First Revised Sheets Nos. 3 through 7 to FPC Electric Tariff Volume No. 2 (Supersedes Original Sheets Nos. 3 through 7).

Delmarva Power & Light Company of Maryland, First Revised Sheets Nos. 2 through 7 to FPC Electric Tariff Volume No. 2 (Supersedes Original Sheets Nos. 2 through 7).

B. Proposed supplements to rate schedules covering service to municipal customers.[1]

Other party and designation

Middletown, Del.: Delmarva Power & Light Co., Supplement No. 8 to Rate Schedule FPC No. 12 (Supersedes Supplement No. 7).

Town of St. Michaels, Md.: Delmarva Power & Light Co. of Maryland, Supplement No. 8 to Rate Schedule FPC No. 7 (Supersedes Suplement No. 7).

C. Proposed new tariffs to replace present rate schedules covering service to cooperative customers.

Delmarva Power & Light Co., FPC Electric Tariff Volume No. 3.

Delmarva Power & Light Company of Maryland, FPC Electric Tariff Volume No. 3.

Delmarva Power & Light Company of Virginia, FPC Electric Tariff Volume No. 1.

[F.R. Doc. 70-16409; Filed, Dec. 7, 1970; 8:45 a.m.]

[Docket No. CP69-345]

EL PASO NATURAL GAS CO.

Notice of Petition To Amend

DECEMBER 1, 1970.

Take notice that on November 20, 1970, El Paso Natural Gas Co. (El Paso), Post Office Box 1492, El Paso, TX 79999, filed in Docket No. CP69-345 a petition to amend the order of the Commission authorizing the construction and operation of certain facilities issued January 20, 1970, in the subject docket so as to extend from January 20, 1971, to May 12, 1972, the time within which to construct and place in operation the authorized facilities, all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

El Paso states that by order issued January 20, 1970, in Docket No. CP69-345, El Paso was granted certificate authorization under section 7 of the Natural Gas Act to construct and operate certain facility additions to its Northwest Division System and to transport and deliver, to its Northwest Division System customers, natural gas to be purchased by El Paso from Westcoast Transmission Co. Ltd. (Westcoast), and imported from Canada at a point on the international boundary near Sumas, Wash. (Sumas Import Point).

The authorization granted by the said certificate order of January 20, 1970, specified that the facilities authorized must be constructed and placed in actual operation within 12 months of the date of issuance of said order; i.e., by January 20, 1971. Further, the authorization granted was conditioned, through paragraph (E) thereof, upon receipt by Westcoast of appropriate, complemental authorizations of the National Energy Board of Canada.

El Paso states that on September 9, 1970, as approved by order in Council P.C. 1970-1707 dated September 29, 1970, the National Energy Board of Canada issued License No. GL-41 empowering Westcoast to sell and export to El Paso at the Sumas Import Point natural gas in quantities up to 800,000 Mcf daily, subject to certain price conditions.

El Paso states that only as a result of the delay experienced by Westcoast in receipt of its Canadian regulatory authorizations, was El Paso unable to commence the construction of the facilities authorized by the said order issued January 20, 1970, in Docket No. CP69-345 and requests that the Commission amend its order issued January 20, 1970, in Docket No. CP69-345, so as to extend from January 20, 1971, to May 12, 1972, the time within which to construct and place in operation the authorized facilities.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before December 21, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-16438; Filed, Dec. 7, 1970; 8:48 a.m.]

[Docket No. G-14750, etc.]

HAMILTON BROTHERS PETROLEUM CORP.

Notice of Petition To Amend

DECEMBER 2, 1970.

Take notice that on August 28, 1970, Hamilton Brothers Petroleum Corp. (petitioner), 1517 Denver Club Building, Denver, CO 80202, filed in Docket No. G-14750 et al., a petition to amend the orders issuing certificates of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act in said dockets by substituting Petitioner in lieu of Frederic C. and Ferris F. Hamilton, doing business as Hamilton Brothers, Ltd., all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it has acquired the producing properties of Frederic C. and Ferris F. Hamilton, doing business as Hamilton Brothers, Ltd., and that it proposes to continue without change the sales of natural gas in interstate commerce.

Any person desiring to be heard or to make any protest with reference to said petition should on or before December 24, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

GORDON M. GRANT, *Secretary.*

[F.R. Doc. 70-16439; Filed, Dec. 7, 1970; 8:48 a.m.]

[Docket No. CP71-145]

MICHIGAN GAS STORAGE CO.

Notice of Application

NOVEMBER 27, 1970.

Take notice that on November 18, 1970, Michigan Gas Storage Co. (applicant), 212 West Michigan Avenue, Jackson, MI 49201, filed in Docket No. CP71-145 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing applicant to use its

[1] The proposed supplement to the rate schedule covering service to the city of Dover, Del., is rejected by this order.

existing facilities, for the transportation for and in behalf of Consumers Power Co. (Consumers Power), applicant's parent company, of 700,000 Mcf of natural gas per day and additional volumes of gas up to 50,000 Mcf per day which are received from time to time by Consumers Power from Trunkline Gas Co. (Trunkline), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that pursuant to an agreement dated February 21, 1967, as amended June 17, 1969, between Trunkline and Consumers Power, Trunkline is to increase its deliveries of natural gas to Consumers Power from 600,000 Mcf per day to 700,000 Mcf per day commencing November 1, 1970. However, due to construction difficulties, such increased deliveries will not commence until January 1, 1971. Applicant also states that, from time to time, during periods of low market demand, Trunkline may have available, in excess of such contract quantities, volumes of gas ranging up to 50,000 Mcf per day, and that Consumers Power may desire to purchase some of such additional gas. The application states that it is Applicant's desire to transport said volumes of gas for and in behalf of Consumers Power. Also, the application states that no additional facilities need be constructed by applicant and that all costs arising from said service will be passed on to Consumer Power pursuant to applicant's cost-of-service tariff.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16410; Filed, Dec. 7, 1970; 8:45 a.m.]

[Docket No. E-7577]

MISSISSIPPI POWER AND LIGHT CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 2, 1970.

Take notice that on November 16, 1970, Mississippi Power and Light Co. (company) filed rate schedule changes for sales to eight electric power associations located in the State of Mississippi. The date on which the rate changes are proposed to become effective is January 20, 1971.

According to the company, the rate changes proposed would increase the associations' rates by $790,301 for the year ending January 1971, and by $819,381 for the year ending January 1972. The company further states that its studies, using a test year 1969, reveal a 4.39 percent return on its present rates while the proposed rates show a 5.81 percent return, less than fully compensatory but within the company's past policy of receiving lower rates of return from associations in order to help economic development of rural areas. The instant rate filing is designated Rate Schedule REA-11 which would supersede Rate Schedule REA-10 for 7 associations and Rate Schedule REA-9 for one association. Copies of the filing have been served on the Mississippi Public Service Commission and the affected associations.

Any person desiring to be heard or to make any protest with reference to the said application should on or before December 22, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16434; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. E-7572]

MISSOURI POWER & LIGHT CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 2, 1970.

Take notice that on October 29, 1970, Missouri Power & Light Co. (company) filed rate schedule changes for sales to an investor-owned utility located in the State of Missouri. The date on which the rate changes are proposed to become effective is December 22, 1970.

According to the company, the proposed rate increase would amend the Electric Service Agreement between itself and its affiliate Missouri Edison Co., now designated Rate Schedule FPC No. 25, and would effect an increase of approximately $376,000 annually in the revenue received under the aforementioned rate schedule.

The company states that its supplier and parent, Union Electric Co., has filed a proposed increase of approximately $1,018,000 annually and that the instant filing seeks to flow through a portion of that proposed increase to the company's customer, Missouri Edison Co.

Copies of the instant filing have been served on Missouri Edison Co.

Any person desiring to be heard or to make any protest with reference to the said application should on or before December 31, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules or practice and procedure.

The application is on file with the Commission's rules of practice and inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16435; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. RP71-44]

OKLAHOMA NATURAL GAS GATHERING CORP.

Notice of Proposed Changes in Rates and Charges

DECEMBER 2, 1970.

Take notice that on November 20, 1970, Oklahoma Natural Gas Gathering Corp. (gathering corporation) tendered for filing proposed changes in its FPC Gas Rate Schedules No. 1 and No. 2, as supplemented, to become effective on January 1, 1971. The proposed rate changes

would increase charges for jurisdictional sales by approximately $570,900 annually based on sales to gathering corporation's only customers, Oklahoma Natural Gas Co. and Cities Service Gas Co., for the 12-month period ending August 31, 1970, as adjusted. Gathering corporation states that the proposed rate increase is solely for the purpose of tracking the increased cost of natural gas purchased from producers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 29, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules. The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16436; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. E-7571]

UNION ELECTRIC CO.

Notice of Proposed Rate Schedule Changes

DECEMBER 2, 1970.

Take notice that on October 29, 1970, Union Electric Co. (company) filed rate schedule changes for sales to an investor-owned utility located in the State of Missouri. The date on which the rate changes are proposed to become effective is December 22, 1970.

According to the company, the proposed rate increase would amend the Electric Service Agreement between itself and its subsidiary Missouri Power & Light Co., now designated Rate Schedule FPC No. 49, and would effect an increase of approximately $1,018,000 annually in revenue received under the aforementioned rate schedule. The company states that the demand and energy rates are not changed by its proposal. The amendment, however, changes the provisions of the Electric Service Agreement by making facilities payments a mutual obligation of the parties. Previously, such payments were only made by Missouri Power & Light Co. to the company. The proposed adds a description of the responsibilities of both parties to provide such facilities. Additionally, under the new proposal billing demand has been redefined to require Missouri Power & Light Co. to be responsible for its demand for 12 months after establishment or until a higher demand is reached. Previously, Missouri Power & Light Co. was responsible for each monthly demand as established.

The company further states, that contemporaneous with this filing, Missouri Power & Light Co. is filing an amendment to its Rate Schedule FPC No. 25 which would have the effect of flowing through to its customers, also a subsidiary of Union Electric Co., Missouri Edison Co., any increased charges made by the company under this amendment.

Copies of this filing have been served on Missouri Power & Light Co.

Any person desiring to be heard or to make any protest with reference to the said application should on or before December 31, 1970, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to the proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules of practice and procedure.

The application is on file with the Commission and available for public inspection.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16437; Filed, Dec. 7, 1970; 8:47 a.m.]

[Docket No. CP71-137]

UNITED GAS, INC. AND TENNESSEE GAS PIPELINE CO.

Notice of Application; Correction

NOVEMBER 25, 1970.

In the notice of application, issued November 18, 1970, and published in the FEDERAL REGISTER November 26, 1970 F.R. 35(18141), In the Caption: After "Tenneco" delete Comma, After "Act" add "for an order", After "Tenneco" delete comma.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16441; Filed, Dec. 7, 1970; 8:48 a.m.]

[Docket No. CP71-144]

UNITED GAS PIPE LINE CO.

Notice of Application

NOVEMBER 27, 1970.

Take notice that on November 17, 1970, United Gas Pipe Line Co. (United), 1500 Southwest Tower, Houston, Tex. 77002, filed in Docket No. CP71-144 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas for resale of Mid Louisiana Gas Co. (Mid Louisiana), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United states that it has entered into an agreement with Mid Louisiana and Pennzoil Pipeline Co. (Pennzoil Pipeline) to exchange natural gas. To accomplish that exchange, United seeks authorization to sell and deliver up to 40,000 Mcf per day of natural gas to Mid Louisiana for a term of 5 years. This natural gas, which comes from the Mud Lake Field, Cameron Parish, La., is now being sold by United to its Texas intrastate affiliate, Pennzoil Pipeline, as authorizing by order of the Commission in Docket No. CP70-103. The loss of the natural gas which Pennzoil Pipeline now receives from the Mud Lake Field will be replaced by natural gas which Pennzoil Pipeline will receive from an affiliate of Mid Louisiana.

The application states that the delivery point of the natural gas delivered by United to Mid Louisiana will be at an existing interconnection between the facilities of United and Transcontinental Gas Pipe Line Corp. (Transco) at the outlet side of Mobil Oil Corp.'s Cameron Plant (Mud Lake) located in Cameron Parish, La., at which point United will deliver natural gas to Transco for the account of Mid Louisiana.

The application states that no new construction will be required and that the proposed sale will not affect the reserves available to United's present interstate customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 15, 1970, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

GORDON M. GRANT,
Secretary.

[F.R. Doc. 70-16411; Filed, Dec. 7, 1970; 8:45 a.m.]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-80]

SECRETARY OF DEFENSE

Delegation of Authority

DECEMBER 1, 1970.

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent the customer interest of the Federal Government in a communications service rate proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.*

a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the interests of the Federal Government before the Hawaiian Public Utilities Commission in a proceeding involving intrastate rates for communications services provided by the Hawaiian Telephone Co. (Docket No. 1871).

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and, further, shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

ROBERT L. KUNZIG,
Administrator of General Services.

[F.R. Doc. 70-16417; Filed, Dec. 7, 1970; 8:46 a.m.]

INTERIM COMPLIANCE PANEL (COAL MINE HEALTH AND SAFETY)

CONSOLIDATION COAL CO. AND BEAVER CREEK CONSOLIDATED COAL CO.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.^{3}) have been received as follows:

(1) ICP Docket No. 10206, Consolidation Coal Co., Shoemaker No. 9 Mine, USBM ID No. 46 01436 0, Moundsville, Marshall County, W. Va., Section ID No. 002 (Main East Returns) Section ID No. 010 (12 Left off 1 North).

(2) ICP Docket No. 10007, Beaver Creek Consolidated Coal Co., Jones Fork Mine, USBM ID No. 15 02146 0, Lackey, Knott County, Ky., Section ID No. 001 (A Section N. Main Headings) Section ID No. 002 (B Section 1st E. off N. Main Hdgs).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

December 2, 1970.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

[F.R. Doc. 70-16447; Filed, Dec. 7, 1970; 8:48 a.m.]

WESTMORELAND COAL CO. ET AL.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.^{3}) have been received as follows:

(1) ICP Docket No. 10647, Westmoreland Coal Co., Wentz No. 1 Mine, USBM ID NO. 44 00302 0, Stonega, Wise County, Va., Section ID No. 008, (2 Main East No. 10 right).

(2) ICP Docket No. 10652, Westmoreland Coal Co., Pine Branch Mine No. 1, USBM ID NO. 44 00298 0, Dunbar, Wise County, Va., Section ID No. 004 (No. 2 Left.).

(3) ICP Docket No. 11181, Freeman Coal Mining Corp., Orient No. 4 Mine, USBM ID NO. 11 00628 0, Pittsburg, Williamson County, Ill., Section ID No. 005 (Northeast Entries off N.E.).

(4) ICP Docket No. 11108, Freeman Coal Mining Corp., Orient No. 3 Mine, USBM ID NO. 11 00600 0, Waltonville, Jefferson County, Ill., Section ID No. 008, (5 West off Main South off WN).

In accordance with the provisions of section 202(b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, D.C. 20006.

December 3, 1970.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

[F.R. Doc. 70-16448, Filed, Dec. 7, 1970; 8:48 a.m.]

UNION CARBIDE CORP. AND KENTUCKY CARBON CORP.

Applications for Renewal Permits; Notice of Opportunity for Public Hearing

Applications for Renewal Permits for Noncompliance with the Interim Mandatory Dust Standard (3.0 mg./m.^{3}) have been received as follows:

(1) ICP Docket No. 10436, Union Carbide Corp., Fawn Mine, USBM ID NO. 36 00834 0, Saxonburg, Butler County, Pa., Section ID No. 001 (No. 1, Southwest Mains), Section ID No. 002 (No. 1 Northwest Mains).

(2) ICP Docket No. 10271, Kentucky Carbon Corp., Kencar No. 1 Mine, USBM ID NO. 15 02107 0, Phelps, Pike County, Ky. Section ID No. 004 (North Mains).

In accordance with the provisions of section 202 (b)(4) of the Federal Coal Mine Health and Safety Act of 1969 (83 Stat. 742, et seq., Public Law 91-173), notice is hereby given that requests for public hearing as to an application for renewal may be filed within 15 days after publication of this notice. Requests for public hearing must be completed in accordance with 30 CFR Part 505 (35 F.R. 11296, July 15, 1970), copies of which may be obtained from the Panel on request.

A copy of the application is available for inspection and requests for public hearing may be filed in the office of the Correspondence Control Officer, Interim Compliance Panel, Suite 800, 1730 K Street NW., Washington, DC 20006.

GEORGE A. HORNBECK,
Chairman,
Interim Compliance Panel.

DECEMBER 3, 1970.

[F.R. Doc. 70-16449; Filed, Dec. 7, 1970; 8:48 a.m.]

RAILROAD RETIREMENT BOARD

RAILROAD UNEMPLOYMENT

Insurance Account Proclamation

Pursuant to section 8(a) of the Railroad Unemployment Insurance Act, as amended, the Railroad Retirement Board had determined, and hereby proclaims, that as of the close of business on September 30, 1970, there was a deficit of $62,824,818.93 in the railroad unemployment insurance account. The underlying figures relating to the computation of this deficit follow:

Unexpended amount in the railroad unemployment insurance account	$269,542.26
Deduct:	
Amounts borrowed from the Railroad Retirement Account which have not been repaid	—68,600,000.00
Accrued interest on such borrowed amounts	—927,774.03
Deficit in railroad unemployment insurance account proper	69,258,231.77 (D)
Add:	
Balance in railroad unemployment insurance administration fund	+6,433,412.84
Deficit in railroad unemployment insurance account	$62,824,818.93 (D)

In witness whereof the members of the Railroad Retirement Board have hereunto set their hands and caused its seal to be affixed.

Done at Chicago, Ill., this 30th day of November, 1970.

HOWARD W. HABERMEYER,
Chairman.

[SEAL] NEIL P. SPEIRS,
Member.

By the Railroad Retirement Board.

LAWRENCE GARLAND,
Secretary of the Board.

[F.R. Doc. 70-16424; Filed, Dec. 7, 1970; 8:46 a.m.]

CUMULATIVE LIST OF PARTS AFFECTED—DECEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during December.